130-655

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 310. 55

THE DISTRICT OF COLUMBIA, APPELLANTS,

vs.

THOMAS W. CORNELL.

APPEAL FROM THE COURT OF CLAIMS.

FILED SEPTEMBER 20, 1887.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1887.

No. 316.

THE DISTRICT OF COLUMBIA, APPELLANTS,

VS.

THOMAS W. CORNELL.

APPEAL FROM THE COURT OF CLAIMS.

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1 I.—*Amended petition.—Filed April* 22, 1884, *as a substitute for the controverted matter in the original petition filed Nov.* 1, 1880.

THOMAS W. CORNELL
vs.
THE DISTRICT OF COLUMBIA. } No. 118.

To the honorable the Court of Claims:

Your petitioner respectfully represents:

I.

That he is a citizen of the United States and of the State of Ohio.

II.

That heretofore, to wit, on the 1st day of July, A. D. 1873, the said defendant, by and through the board of public works, said board acting by James A. Magruder, its treasurer, by whom the hereinafter-named bonds were signed, as treasurer of said board, said bonds being also countersigned by Horace J. Frost for the commissioners of the sinking fund of said defendant, executed and issued certain bonds, commonly known as "sewer bonds," said bonds being payable to bearer on the 1st day of July, A. D. 1874, with interest at the rate of eight per centum per annum,
2 payable semi-annually, for which interest coupons were attached, and bearing the numbers and for the amounts following, that is to say:

Bond No. 247 for $500
248 for 500

Aggregating the sum of..... .....$1,000

Each of said bonds being of like tenor and effect, except as to number and amount. A copy of one of said bonds, with coupon, is hereto attached and made a part hereof, marked "Exhibit A." Said bonds are wholly unpaid, excepting that the first installment of interest, which became due on the 1st of January, 1874, has been paid and coupons detached.

III.

And claimant further represents and shows to the court that heretofore, to wit, on the said 1st day of July, 1873, certain other of said bonds, commonly known as "sewer bonds," were executed and issued by the said defendant in manner and form as set forth in paragraph II of this petition, payable to bearer on the 1st day of July, 1875, with interest at the rate of eight per centum per annum, for which interest coupons were attached to said bonds in due form, the said bonds being numbered and for the amounts as hereinafter stated, that is to say:

Bond No.	526 for $500	Bond No.	1411 for $100
	1413 for 100		1414 for 100
	1412 for 100		1405 for 100
	1409 for 100		1406 for 100
	1408 for 100		1404 for 100
	1407 for 100		

Aggregating the sum of..... .... $1,500

Each of said bonds being of like tenor and effect, except as to number and amount. A copy of one of said bonds, with coupons attached, is hereunto attached and made a part hereof, marked "Exhibit B."

3 Said bonds are wholly unpaid, excepting one installment of interest due January 1, 1874, has been paid and coupons detached.

IV.

And claimant further shows that certain other of said bonds, known as "sewer bonds," were issued by defendant in manner and form as hereinbefore set forth, payable to bearer July 1, 1876, with interest as aforesaid at the rate aforesaid, payable semi-annually, for which interest coupons were attached to said bonds as aforesaid, said bonds being dated July 1, 1873, and all being of the same tenor and effect, excepting as to numbers and amounts, the said bonds so issued being numbered and for the amounts as follows, to wit:

Bond No.	4863 for $50	Bond No.	2651 for $100
	2648 for 100		2650 for 100
	2647 for 100		2974 for 100
	2653 for 100		2614 for 100
	2649 for 100		1379 for 500
	2645 for 100		1378 for 500
	2347 for 100		1377 for 500
	2965 for 100		1057 for 500
	2973 for 100		1055 for 500
	2646 for 100		1206 for 500
	2652 for 100		1029 for 500

Aggregating the sum of $4,950

A copy of one of said bonds is hereto attached, marked "Exhibit C," with the coupons attached to the same. Said bonds, and the interest thereon and the interest on said coupons, are wholly unpaid, excepting that the first installment of interest, due January 1, 1874, has been paid and the coupon detached.

V.

And claimant further avers and shows to the court that said de-

4 fendant, in manner and form as hereinbefore set forth, executed and issued certain other of said bonds, known as "sewer bonds," bearing date July 1, 1873, payable to bearer July 1, 1877, with eight per centum per annum interest, payable semi-annually, for which interest coupons were attached to said bonds, all of like tenor and effect, excepting as to numbers and amounts, the numbers and amounts being as follows, to wit:

Bond No. 6149 for	$50	Bond No. 3867 for	$100
6147 for	50	3868 for	100
6154 for	50	3872 for	100
6152 for	50	3640 for	100
6155 for	50	3677 for	100
6153 for	50	3869 for	100
6150 for	50	3865 for	100
6151 for	50	3861 for	100
3643 for	100	3860 for	100
3644 for	100	3866 for	100
3631 for	100	3636 for	100
3635 for	100	3864 for	100
3641 for	100	3632 for	100
3642 for	100	3873 for	100
3633 for	100	3634 for	100
3645 for	100	3680 for	100
3674 for	100	3351 for	100
3863 for	100	3638 for	100

Aggregating the sum of 3,200

A copy of one of said bonds is hereto attached, with the coupons attached thereto, and made a part hereof, marked "Exhibit D." Said bonds, and the interest thereon and the interest on said coupons, are wholly unpaid, excepting that the first installment of interest falling due January 1, 1874, has been paid and the coupon detached.

VI.

And claimant further avers and shows that the said defendant, in manner and form aforesaid, executed and issued certain other of said certificates, commonly known as sewer certificates, of the same tenor and effect aforesaid, dated July 1, 1873, payable to bearer July 1, 1878, with eight per centum per annum interest, payable semi-annually, for which interest coupons were attached to said bonds; said bonds differing only in numbers and amounts, the numbers and amounts being as follows, viz:

Bond No. 4931 for	$100	Bond No. 4934 for	$100
4373 for	100	4374 for	100
4375 for	100	4932 for	100
4372 for	100	4378 for	100
4933 for	100	4376 for	100
4377 for	100	4379 for	100

Aggregating the sum of 1,200

A copy of one of said bonds is herewith filed and made a part hereof, together with the coupons attached, marked "Exhibit E." Said bonds, and the interest thereon and the interest on said coupons, are wholly unpaid, excepting the first installment of interest which fell due January 1, 1874, which has been paid and the coupon therefore detached.

VII.

Claimant further avers that he is the owner and holder of the said bonds hereinbefore described; that he has not made any assignment or transfer thereof; that there is no just set-off or defense thereto or to any part thereof, and that he is entitled to recover from the defendant the aggregate amount of said bonds, viz, the sum of $11,850, and the interest thereon from the dates aforesaid, excluding the installments of interest paid as hereinbefore set forth, and excluding the sum of $524 interest, for which no coupons appear on the bouds hereinbefore named, and the interest on said coupons; and for said sum of $11,850, and the interest aforesaid, he demands judgment.

6 He further says that he has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against said Government, and that he believes the facts hereinbefore set forth to be true.

THOMAS W. CORNELL.

SHELLABARGER & WILSON, *Attorneys,*
Corcoran Building, Washington, D. C.
THOS. W. CORNELL,
Address, Akron, Ohio.

DISTRICT OF COLUMBIA,
County of Washington, ss:

Thomas W. Cornell, being duly sworn, on oath says that he is the claimant as to the matters set forth in the foregoing petition, and that he has fully read the said petition, and that the matters and things stated in the said petition are true, to the best of affiant's knowledge and belief.

THOMAS W. CORNELL.

Subscribed and sworn to by the above-named Thomas W. Cornell, before me, a notary public duly commissioned and qualified.

Witness my hand and notarial seal this 19th day of April, A. D. 1884.

[SEAL.] GEO. G. ALLEN,
Notary Public, Summit County, Ohio.

[*Exhibit "A."*]

500 500

DISTRICT OF COLUMBIA.

No. 264.

WASHINGTON, *July* 1, 1873.

THIS CERTIFIES, that for work done under direction of the Board of Public Works, and chargeable to the private property adjoining and benefited thereby, there is due to the bearer Five Hundred Dollars, payable July 1, 1874, with eight per centum interest, payable semi-annually, as per coupons attached. Issued in accordance with act of Legislative Assembly; secured by pledge to the Commissioners of the Sinking Fund of assessments made in accordance with act approved June 26, 1873, against private property benefited by improvements, and receivable in payment of such assessments.

BOARD OF PUBLIC WORKS.

Countersigned: By JAMES A. MAGRUDER,

HORACE J. FROST, *Treasurer.*

For Commissioners of Sinking Fund.

Registered:
GEO. E. BAKER,
Comptroller.

Last six months' interest payable with certificate.

[*Exhibit "B."*]

100 100

DISTRICT OF COLUMBIA.

No. 1413.

WASHINGTON, *July 1st*, 1873.

THIS CERTIFIES, that for work done under direction of the Board of Public Works, and chargeable to the private property adjoining and benefited thereby, there is due to the bearer One Hundred Dollars, payable July 1st, 1875, with eight per centum interest, payable semi-annually, as per coupons attached.

Issued in accordance with act of Legislative Assembly, secured by pledge to the Commissioners of the Sinking Fund of assessments made in accordance with act approved June 26, 1873, against private property benefited by improvements, and receivable in payment of such assessments.

BOARD OF PUBLIC WORKS.

Countersigned: 100 By JAMES A. MAGRUDER,
HORACE J. FROST, *Treasurer.*
For Commissioners of Sinking Fund.

Registered:
GEO. E. BAKER,
Comptroller.

Last six months' interest payable with certificate.

DISTRICT OF COLUMBIA.
Due the bearer four dollars, July 1st, 1874, being six months' interest on certificate No.
1413 JAMES A. MAGRUDER,
For Board of Public Works.

DISTRICT OF COLUMBIA.
Due the bearer four dollars, Jan'y 1st, 1875, being six months' interest on certificate No.
1413 JAMES A. MAGRUDER,
For Board of Public Works.

EXHIBIT "C."

$500 $500

DISTRICT OF COLUMBIA.

No. 1380.

WASHINGTON, *July 1st*, 1873.

THIS CERTIFIES, that for work done under direction of the Board of Public Works, and chargeable to the private property adjoining and benefited thereby, there is due to the bearer Five Hundred Dollars, payable July 1st, 1876, with eight per centum interest, payable semi-annually, as per coupons attached. Issued in accordance with act of Legislative Assembly; secured by pledge to the Commissioners of the Sinking Fund of assessments made in accordance with act approved June 26, 1873, against private property benefited by improvements, and receivable in payment of such assessments.

BOARD OF PUBLIC WORKS.
By JAMES A. MAGRUDER,
Treasurer.

Registered:
GEO. E. BAKER,
Comptroller.

Countersigned:
HORACE J. FRENT,
For Commissioners of Sinking Fund.

Last six months' interest payable with certificate.

DISTRICT OF COLUMBIA.
Due the bearer twenty dollars, Jan. 1, 1876, being six months' interest on certificate No.
1380 JAMES A. MAGRUDER,
For Board of Public Works.

DISTRICT OF COLUMBIA.
Due the bearer twenty dollars, July 1, 1875, being six months' interest on certificate No.
1380 JAMES A. MAGRUDER,
For Board of Public Works.

DISTRICT OF COLUMBIA.
Due the bearer twenty dollars, Jan. 1st, 1875, being six months' interest on certificate No.
1380 JAMES A. MAGRUDER,
For Board of Public Works.

DISTRICT OF COLUMBIA.
Due the bearer twenty dollars, July 1, 1874, being six months' interest on certificate No.
1380 JAMES A. MAGRUDER,
For Board of Public Works.

EXHIBIT "D."

100 100

DISTRICT OF COLUMBIA.

No. 3007.

WASHINGTON, *July* 1, 1873.

THIS CERTIFIES, that for work done under direction of the Board of Public Works and chargeable to the private property adjoining and benefited thereby, there is due to the bearer One Hundred Dollars, payable July 1, 1887, with eight per centum interest, payable semi-annually, as per coupons attached.

Issued in accordance with act of Legislative Assembly; secured by pledge to the Commissioners of the Sinking Fund of assessments made in accordance with act approved June 26, 1873, against private property benefited by improvements, and receivable in payment of such assessments.

BOARD OF PUBLIC WORKS.

100 By JAMES A. MAGRUDER,
Treasurer.

10 Registered:
GEO. E. BAKER,
Comptroller.

Countersigned:
HORACE J. FROST,
For Commissioners of Sinking Fund.

Last six months' interest payable with certificate.

DISTRICT OF COLUMBIA.
Due the bearer four dollars, July 1, 1876, being six months' interest on certificate No.
3007 JAMES A. MAGRUDER,
For Board of Public Works.

DISTRICT OF COLUMBIA.
Due the bearer four dollars, July 1, 1875, being six months' interest on certificate No.
3007 JAMES A. MAGRUDER,
For Board of Public Works.

DISTRICT OF COLUMBIA.
Due the bearer four dollars, July 1, 1874, being six months' interest on certificate No.
3007 JAMES A. MAGRUDER,
For Board of Public Works.

DISTRICT OF COLUMBIA.
Due the bearer four dollars, Jan'y 1, 1877, being six months' interest on certificate No.
3007 JAMES A. MAGRUDER,
For Board of Public Works.

DISTRICT OF COLUMBIA.
Due the bearer four dollars, Jan'y, 1, 1876, being six months' interest on certificate No.
3007 JAMES A. MAGRUDER,
For Board of Public Works.

DISTRICT OF COLUMBIA.
Due the bearer four dollars, Jan'y 1, 1875, being six months' interest on certificate No.
3007 JAMES A. MAGRUDER,
For Board of Public Works.

"EXHIBIT E."

50 50

DISTRICT OF COLUMBIA.

No. 8336.

WASHINGTON, *July* 1, 1878.

This certifies, that for work done under direction of the Board of Public Works and chargeable to the private property adjoining and benefited thereby, there is due to the bearer fifty dollars, payable July 1, 1878, with eight per centum interest, payable semi-annually, as per coupons attached.

Issued in accordance with act of legislative assembly; secured by pledge to the commissioners of the sinking fund of assessments made in accordance with act approved June 26, 1873, against private property benefited by improvements, and receivable in payment of such assessments.

BOARD OF PUBLIC WORKS.

By JAMES A. MAGRUDER,
Treasurer.

50

Countersigned:
HORACE J. FROST,
For Commissioners of Sinking Fund.

11 Registered:
GEO. E. BAKER,
Comptroller.

Last six months' interest payable with certificate.

DISTRICT OF COLUMBIA.
Due the bearer two dollars, July 1, 1877, being six months' interest on certificate No.
8336 JAMES A. MAGRUDER,
For Board of Public Works.

DISTRICT OF COLUMBIA.
Due the bearer two dollars, Jan'y 1, 1878, being six months' interest on certificate No.
8336 JAMES A. MAGRUDER,
For Board of Public Works.

DISTRICT OF COLUMBIA.
Due the bearer two dollars, July 1, 1876, being six months' interest on certificate No.
8336 JAMES A. MAGRUDER,
For Board of Public Works.

DISTRICT OF COLUMBIA.
Due the bearer two dollars, Jan'y 1, 1877, being six months' interest on certificate No.
8336 JAMES A. MAGRUDER,
For Board of Public Works.

DISTRICT OF COLUMBIA.
Due the bearer two dollars, July 1, 1875, being six months' interest on certificate No.
8336 JAMES A. MAGRUDER,
For Board of Public Works.

DISTRICT OF COLUMBIA.
Due the bearer two dollars, Jan'y 1, 1876, being six months' interest on certificate No.
8336 JAMES A. MAGRUDER,
For Board of Public Works.

DISTRICT OF COLUMBIA.
Due the bearer two dollars, July 1, 1874, being six months' interest on certificate No.
8336 JAMES A. MAGRUDER,
For Board of Public Works.

DISTRICT OF COLUMBIA.
Due the bearer two dollars, Jan'y 1, 1875, being six months' interest on certificate No.
8336 JAMES A. MAGRUDER,
For Board of Public Works.

12 II.—*General traverse.*—*Filed November* 12, 1880.

And now comes the Attorney-General, on behalf of the District of Columbia, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

THOMAS SIMONS,
Assistant Attorney-General.

13 III.—*Findings of fact and conclusions of law.*

FINDINGS OF FACT.

This case having been heard before the Court of Claims, the court, from the evidence, finds the facts to be as follows:

I.

July 1, 1873, the Board of Public Works for the District of Columbia, under an act of the legislative assembly, approved June 26, 1873, issued "certificates of indebtedness," commonly called sewer certificates, to the amount of about $2,000,000, in the form set forth in exhibits A, B, C, D, and E of claimant's petition. They were paid out to contractors, jobbers, and laborers, by whom they were put upon the market. They soon became greatly depreciated in value, and were bought and sold by brokers and speculators.

II.

After the creation of the Board of Audit by act of Congress, approved June 20, 1874 (18 Stat., 119 and 120), all of the certificates except about $65,000 were presented to that Board and redeemed as provided in the act.

The certificates so redeemed were canceled by stamping across the face in ink, with a ribbon stamp, the words "canceled by the Board of Audit." They were then inclosed in jackets, tied up in bundles of fifty in numerical order, and placed on a shelf under the counter in a room in the Treasury Department, occupied by several clerks, employed by the Board. The fact of redemption was entered in a registry book.

III.

Claimant first brought this suit to recover upon all the certificates set out in his petition, amounting to $33,000. It was then discovered by defendant's attorney that $11,850 of this amount had been redeemed in the manner set forth in Finding II, and that fact was communicated to the claimant. Thereupon the other certificates were withdrawn and judgment rendered thereon in a separate suit.

The only certificates now embraced in this suit were all redeemed, as above stated, and are of the numbers and amounts appearing in the following stipulation:

"It is hereby stipulated and agreed that it appears by the records of

the late Board of Audit and of the sinking-fund commissioner that the following sewer certificates were presented and delivered to the Board of Audit by the respective parties, in the claims and at the dates hereinafter set forth, for audit and conversion, under the act of June 20, 1874, and that the same were audited by said Board, and certificates, convertible into 3.65 bonds, were issued to the said several parties for the full 14 amount of said sewer certificates, which certificates were afterwards converted into the said 3.65 bonds of said district provided for by the said act, and that the said sewer certificates were stamped across their face with a ribbon stamp the words "canceled by the Board of Audit," and were entered on the numerical book of said Board as redeemed, except as to certificates Nos. 3860 and 3861, as to which no entry of their redemption appears on said numerical book:"

Number of certificate.	Amount.	When due.	By whom presented.	Number of claim.	Date of presentation.
247	$500	July 1, 1874	B. Noble	247	Dec. 23, 1874.
248	500	July 1, 1874	do	247	Dec. 23, 1874.
250	500	July 1, 1875	First National Bank, New York	248 W	Oct. 7, 1876.
1404	100	July 1, 1875	do	248 W	Oct. 7, 1876.
1405	100	July 1, 1875	do	248 W	Oct. 7, 1876.
1406	100	July 1, 1875	do	248 W	Oct. 7, 1876.
1407	100	July 1, 1875	do	248 W	Oct. 7, 1876.
1408	100	July 1, 1875	do	248 W	Oct. 7, 1876.
1409	100	July 1, 1875	do	248 W	Oct. 7, 1876.
1411	100	July 1, 1875	do	248 W	Oct. 7, 1876.
1412	100	July 1, 1875	do	248 W	Oct. 7, 1876.
1413	100	July 1, 1875	do	248 W	Oct. 7, 1876.
1414	100	July 1, 1875	do	248 W	Oct. 7, 1876.
1939	500	July 1, 1876	do	248 W	Oct. 7, 1876.
1965	500	July 1, 1876	B. Noble	247 W	Dec. 23, 1876.
1967	500	July 1, 1876	do	247 W	Dec. 23, 1876.
1966	500	July 1, 1876	First National Bank, New York	248 W	Oct. 7, 1876.
1977	500	July 1, 1876	Jersey City Gas Light Company	250 W	Jan. 23, 1877.
1978	500	July 1, 1876	do	250 W	Jan. 23, 1877.
1979	500	July 1, 1876	do	250 W	Jan. 23, 1877.
2047	100	July 1, 1876	First National Bank, New York	248 W	Oct. 7, 1876.
2214	100	July 1, 1876	do	248 W	Oct. 7, 1876.
2245	100	July 1, 1876	do	248 W	Oct. 7, 1876.
2246	100	July 1, 1876	do	248 W	Oct. 7, 1876.
2247	100	July 1, 1876	do	248 W	Oct. 7, 1876.
2248	100	July 1, 1876	do	248 W	Oct. 7, 1876.
2249	100	July 1, 1876	do	248 W	Oct. 7, 1876.
2250	100	July 1, 1876	do	248 W	Oct. 7, 1876.
2251	100	July 1, 1876	do	248 W	Oct. 7, 1876.
2252	100	July 1, 1876	do	248 W	Oct. 7, 1876.
2253	100	July 1, 1876	do	248 W	Oct. 7, 1876.
2265	100	July 1, 1876	do	248 W	Oct. 7, 1876.
2273	100	July 1, 1876	First National Bank, New York	248 W	Oct. 7, 1876.
2274	100	July 1, 1876	do	248 W	Oct. 7, 1876.
4029	50	July 1, 1876	do	248 W	Oct. 7, 1876.
2821	100	July 1, 1877	do	248 W	Oct. 7, 1876.
2821	100	July 1, 1877	do	248 W	Oct. 7, 1876.
2822	100	July 1, 1877	do	248 W	Oct. 7, 1876.
2823	100	July 1, 1877	do	248 W	Oct. 7, 1876.
2824	100	July 1, 1877	do	248 W	Oct. 7, 1876.
2825	100	July 1, 1877	do	248 W	Oct. 7, 1876.
2826	100	July 1, 1877	do	248 W	Oct. 7, 1876.
2839	100	July 1, 1877	do	248 W	Oct. 7, 1876.
2841	100	July 1, 1877	do	248 W	Oct. 7, 1876.
2842	100	July 1, 1877	do	248 W	Oct. 7, 1876.
2843	100	July 1, 1877	do	248 W	Oct. 7, 1876.
2844	100	July 1, 1877	do	248 W	Oct. 7, 1876.
2845	100	July 1, 1877	do	248 W	Oct. 7, 1876.
2874	100	July 1, 1877	do	248 W	Oct. 7, 1876.
2877	100	July 1, 1877	do	248 W	Oct. 7, 1876.
2880	100	July 1, 1877	do	248 W	Oct. 7, 1876.
2880	100	July 1, 1877	do	(*)	Oct. 7, 1876.
2881	100	July 1, 1877	do	(*)	Oct. 7, 1876.

*No entry on numerical book.

Number of certificate.	Amount.	When due.	By whom presented.	Number of claim.	Date of presentation.
3863	$100	July 1, 1877	First National Bank, New York	502 W	Oct. 7, 1874.
3864	100	July 1, 1877	do	502 W	Oct. 7, 1874.
3865	100	July 1, 1877	do	502 W	Oct. 7, 1874.
3866	100	July 1, 1877	do	502 W	Oct. 7, 1874.
3867	100	July 1, 1877	do	502 W	Oct. 7, 1874.
3868	100	July 1, 1877	do	502 W	Oct. 7, 1874.
3869	100	July 1, 1877	do	502 W	Oct. 7, 1874.
3872	100	July 1, 1877	do	502 W	Oct. 7, 1874.
3873	100	July 1, 1877	do	502 W	Oct. 7, 1874.
6147	50	July 1, 1877	Jersey City Gas Light Company	580 W	Jan. 16, 1875.
6149	50	July 1, 1877	do	580 W	Jan. 16, 1875.
6150	50	July 1, 1877	do	580 W	Jan. 16, 1875.
6151	50	July 1, 1877	do	580 W	Jan. 16, 1875.
6152	50	July 1, 1877	do	580 W	Jan. 16, 1875.
6153	50	July 1, 1877	do	580 W	Jan. 16, 1875.
6154	50	July 1, 1877	do	580 W	Jan. 16, 1875.
6155	50	July 1, 1877	do	580 W	Jan. 16, 1875.
[15]					
4372	100	July 1, 1878	First National Bank, New York	502 W	Oct. 7, 1874.
4373	100	July 1, 1878	do	502 W	Oct. 7, 1874.
4374	100	July 1, 1878	do	502 W	Oct. 7, 1874.
4375	100	July 1, 1878	do	502 W	Oct. 7, 1874.
4376	100	July 1, 1878	do	502 W	Oct. 7, 1874.
4377	100	July 1, 1878	do	502 W	Oct. 7, 1874.
4378	100	July 1, 1878	do	502 W	Oct. 7, 1874.
4379	100	July 1, 1878	do	502 W	Oct. 7, 1874.
4381	100	July 1, 1878	do	502 W	Oct. 7, 1874.
4382	100	July 1, 1878	do	502 W	Oct. 7, 1874.
4383	100	July 1, 1878	do	502 W	Oct. 7, 1874.
4394	100	July 1, 1878	do	502 W	Oct. 7, 1874.
	11,850				

"SHELLABARGER & WILSON,
Attorneys for Claimant.
"THOMAS SIMONS,
"Assistant Attorney-General."

IV.

After the redemption and cancellation of the certificates embraced in the foregoing stipulation, and while they were in the custody of the Board of Audit, as stated in Finding II, they were stolen, in February or March, 1876, by one George H. Farnham, who was then a clerk in the employ of the board, and occupying a desk behind the counter under which the certificates were deposited, but whose duties were not connected with the redemption or care of the certificates.

V.

By the use of detersive soap Farnham entirely removed from a large portion of the certificates the marks of cancellation. From other certificates, on which some ink marks still appeared, he cut off the coupons and pasted them over the partially effaced marks. In this condition no signs or marks of cancellation or redemption were visible on the certificates, but some of them still had a soiled or stained appearance.

VI.

Farnham sold the stolen certificates to brokers in Washington at prices ranging from 35 to 40 per cent. of their par value. That was at that

time about their market value. These brokers had no notice of the redemption and cancellation, and purchased them in good faith. By these brokers they were sold to Samuel S. Ritchie for value received. Ritchie purchased in like good faith without knowledge of any defence. Ritchie sold them to the claimant, who resided at Akron, Ohio, and forwarded them to him in parcels immediately after his own purchase.

The claimant purchased the certificates from Ritchie in good faith and paid a valuable consideration therefor without notice that the same had been redeemed or canceled, or that any defence to their payment existed.

16 The certificates were in the same condition then in respect of their appearance as to indicating signs or evidences of cancellation or redemption as they were at the time they were first negotiated by Farnham and as they are now.

VII.

A part of the certificates embraced in this suit, amounting to $2,500, fell due July 1, 1874 and 1875, and were therefore overdue at the time they were stolen.

Another part of the certificates, amounting to $7,750, were purchased by Ritchie and transferred to the claimant before they were due.

The remainder, amounting to $1,600, appear to have been purchased by Ritchie and the claimant after they were due. Whether they were purchased of Farnham by the brokers before or after they were due does not appear.

VIII.

The coupons due January 1, 1874, were not transferred to the claimant or his assignors; but all coupons falling due subsequent to that date were either attached to the certificates, or, having been cut off, were pinned or pasted to them and were transferred with them.

IX.

The certificates embraced in this suit, and now on file in the court, belong to the class of sewer certificates named in section 16 of the act of March 3, 1875 (18 Stat., 505).

CONCLUSIONS OF LAW.

Upon the foregoing findings of facts the court decides, as conclusions of law, that—

1. For the certificates which fell due July 1, 1874 and 1875, amounting to $2,500, the claimant is not entitled to recover.

2. For other certificates purchased by Ritchie after due and transferred to claimant, and not shown to have been purchased by any former holder before due, amounting to $1,600, he is not entitled to recover.

3. For coupons falling due on or before January 1, 1876, the claimant is not entitled to recover.

4. For certificates purchased by Ritchie and transferred to claimant before due, amounting to $7,750, he is entitled to recover, with interest at

the rate of 3.65 per cent. from January 1, 1876, as provided by the act of Congress of June 20, 1874 (18 Stat., 119), and of June 16, 1880 (21 Stat., 284).

IV.—*Opinion of the court.*

SCOFIELD, J., delivered the opinion of the court.

July 1, 1873, the Board of Public Works for the District of Columbia issued "certificates of indebtedness," commonly called sewer certificates, to the amount of about $2,000,000. They were issued in sums of $50 and multiples thereof, and made payable to bearer. They became due
17 at different dates, beginning with July 1, 1874, and ending July 1, 1878. Coupons for the semi-annual interest, at the rate of 8 per cent., were attached.

The certificates were paid out to contractors, laborers, and others, and were bought and sold by brokers and speculators at depreciated prices.

By act of Congress approved June 20, 1874, the Board of Public Works was abolished and a Board of Audit, consisting of the First and Second Comptrollers of the United States, created, authorized to audit the floating indebtedness of the District, including the sewer certificates, and to issue therefor Auditor's certificates, convertible into a new District bond, bearing interest at 3.65 per cent.

Under the operation of this act all the sewer certificates, except about $65,000, were redeemed prior to February, 1876, and canceled by stamping in ink across the face the words, "canceled by the Board of Audit." When so stamped they were tied up in bundles and placed on a shelf under a counter in the room when the work had been done. In February or March, 1876, a package of the certificates thus canceled, amounting to $11,850, was stolen by George H. Farnham, a clerk in the employ of the Board of Audit, with a desk in this room, but who had no connection with the redemption, cancellation, or care of the certificates. From a large portion of the certificates Farnham easily and entirely removed the marks of cancellation by the use of detersive soap. Upon some of them ink marks were still visible. From these he cut off the coupons and pasted them over the partially effaced cancellation.

In this condition he sold the certificates to brokers in Washington, who sold them to S. S. Ritchie, from whom the claimant purchased.

All of these several parties purchased the certificates for a valuable consideration, in good faith, without knowledge or suspicion that they had been redeemed or canceled.

A portion of the certificates thus purchased, amounting to $2,500, became due July 1, 1874 and 1875, and were, therefore, overdue when stolen.

Another portion, amounting to $7,750, were purchased by Ritchie and transferred to the claimant before due.

The remainder, amounting to $1,600, were not purchased by Ritchie until after due. Whether they were purchased from Farnham by Ritchie's assignors before or after due does not appear.

Ritchie forwarded and sold to the claimant, who resided at Akron, Ohio, the certificates as fast as purchased.

That the claimant is not entitled to recover upon the certificates which became due in 1874 and 1875, amounting to $2,500, there can be no doubt. They were due before they were stolen, and the purchaser took them subject to all legal defenses.

Another portion of the certificates, amounting to $1,000, cannot be considered as standing in any better position. It having been shown that they were acquired by the claimant and his immediate assignor, Mr. Ritchie, after due, it became part of his case, in order to avail himself of the rights of prior holders, to show that they purchased the certificates before they were due. The claimant has not proved that fact, and the law will not presume it.

To the remaining $7,750 several defenses are set up.

It is said the certificates were not negotiable, because they con-
18 tained the following recitation: "That for work done under direction of the Board of Public Works, and chargeable to private property adjoining, and benefited thereby * * * secured by pledge to the commissioners of the sinking fund, of assessments made in accordance with the act approved June 26, 1874, against private property benefited by improvements and receivable in payment of such assessments."

The first clause only recited the consideration, and is equivalent to saying "for value received." The statement that value was received in a particular way does not effect the negotiability of the paper. The second clause recites the manner in which the District expected to reimburse itself for the payment of the certificates, but does not limit the liability of the District to this one source of revenue. It was apparently inserted to give the certificates greater credit by announcing that the District had this means of payment in addition to ordinary taxation. The general liability of the District and the negotiability of the certificates are declared in these words: "This certifies that * * * there is due to the bearer," &c.

The defendant further contends that under the operation of the act of June 20, 1874 (18 Stat., 119 and 120), all the certificates became due August 1, 1874, and were thus overdue and subject to any defense existing at the time of claimant's purchase. We do not concur in this position. By this act a new bond, running from August 1, 1874, was created, into which the creditors of the District were permitted, at their option, within a limited time, to fund their claims. In this way most of the securities were funded within the prescribed time.

By the act of June 16, 1880 (21 Stat., 284), the holders of certificates not thus funded, were allowed to establish their claims in this court. By sections 5 and 6 of that act the judgments rendered by the court against the District are to be paid in the manner provided in the act of June 20, 1874. The District could not be called upon to pay the certificates before they become due by their own terms in any other way than the one prescribed by this act.

The defendant further contends that the appearance of the certificates was such that the claimant was bound, at his peril, to make inquiry at the office of redemption. The rule applicable to the case is stated by the Supreme Court in Cromwell *v.* The County of Sac (96 U. S., 57 and 58), as follows:

"Obligations of municipalities in the form of those in suit here, are placed by numerous decisions of this court on the footing of negotiable paper. They are transferable by delivery, and, when issued by competent authority, pass into the hands of bona fide purchasers for value before maturity, freed from any infirmity in their origin. Whatever fraud the officers authorized to issue them may have committed in disposing of

them, or however entire may have been the failure of consideration promised by parties receiving them, these circumstances will not affect the title of subsequent bona fide purchasers for value before maturity or the liability of the municipalities. As with other negotiable paper, mere suspicion that there may be a defect of title in its holder, or knowledge of circumstances which would excite suspicion as to his title in the mind of a prudent man, is not sufficient to impair the title of the purchaser; that result will only follow where there has been bad faith on his part. Such is the decision of this court, and substantially its language, in the case of Murray *v.* Lardner, reported in 2 Wall., where the leading authorities on the subject are considered."

The court has been unable to find in the appearance and condition of the certificates the facts, which, according to the requirements of this rule, should defeat a recovery.

19 The only suspicious facts about the certificates were overdue coupons attached to them, coupons not due cut off and pasted on the face of some of them, and the soiled or stained appearance of others. All these appearances might escape the attention of a cautious man; but if they did not, explanations, satisfactory even to suspicious persons, would naturally occur. It was well known that after the act of June 20, 1874, the coupons had not been paid and the absence of overdue coupons would have been more suspicious than their presence. It was also well known that the certificates, having been issued in small sums, were paid out to contractors, jobbers, and laborers, and passed from hand to hand. In this way both the soiled condition and the unusual way of attaching severed coupons might be readily accounted for.

The Board of Audit, which for the purpose of redeeming and caring for the certificates was the defendant's agent, are not free from blame. Considering that they were redeemed long before they were due, the cancellation was entirely insufficient to protect the public against imposition. They should have been punched or otherwise mutilated, or burned, as required by section 16 of the act of March 3, 1875, (18 Stat. L., 505), or at least deposited in a safe or vault. Instead of that they were stamped with ordinary ink, easily washed off, and left in a room exposed to the view of all persons visiting it, in a way to lead weak or dishonest persons into temptation.

Considering this fact in connection with the rules of law and the facts before referred to, the court arrives at the conclusion that the claimant is entitled to recover for the amount of certificates purchased before due, to wit, $7,750. This does not enable him to recover for the coupons attached but long overdue at the time of purchase.

Judgment will be entered for $7,750, due and payable as of January 1, 1876.

20 V.—*Final judgment.*

At a Court of Claims held in the city of Washington on the 23d day of May, A. D. 1885, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the said Thomas W. Cornell do have and recover in the manner provided by the act of June 16, 1880,

chapter 243, the sum of seven thousand seven hundred and fifty dollars ($7,750), upon debts of the District of Columbia due and payable January 1, 1876, within the meaning of the 6th section of said act.

21 VI.—*Application of defendant for, and allowance of, appeal.*

From the judgment rendered in the above-entitled cause on the 23d day of March, 1885, in favor of claimant, the defendant, by the Attorney-General, on the 11th day of June, 1885, makes application for, and gives notice of, an appeal to the Supreme Court of the United States.

ROBERT A. HOWARD,
Assistant Attorney-General.

Filed June 11, 1885.
Allowed June 11, 1885.

WILLIAM A. RICHARDSON,
Chief Justice.

22 VII.

In the Court of Claims.

THOMAS W. CORNELL
vs.
THE DISTRICT OF COLUMBIA. } No. 118.

I, Archibald Hopkins, chief clerk of the Court of Claims, due hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the opinion of the court, of the final judgment, of the application of defendant for and the allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 22nd day of September, A. D. 1885.

ARCHIBALD HOPKINS,
Chief Clerk Court of Claims.

(Indorsement on cover:) No. 316. The District of Columbia, appellant, vs. Thomas W. Cornell. Court of Claims. Filed September 29, 1885.

6745——2

IN THE

Supreme Court of the United States.

THE DISTRICT OF COLUMBIA, Appellant,

vs.

THOMAS W. CORNELL.

No 53

Appeal by the District of Columbia from The Court of Claims.

BRIEF FOR APPELLEE.

By SAMUEL SHELLABARGER,
J. M. WILSON.

Thomas McGill & Co., Printers, Washington, D. C.

IN THE

Supreme Court of the United States.

THE DISTRICT OF COLUMBIA, APPELLANTS,

vs.

THOMAS W. CORNELL.

The facts in this case are in the findings by the court (R., 10–13), and need not in this brief be recapitulated. We will first notice some of the points made in the appellant's brief.

The first point in the brief which we care to notice is stated on page 4, where it is insisted that the sewer certificates, which were the predicate of the judgment below, were never negotiable instruments, but that whatever quality of negotiability they had prior to the act of June 20, 1874 (18 Stats., 119–120) they were deprived of by the operation of that act.

This point is thus expressed, speaking of the law of 1874:

"Here was a public act, a law of Congress of which everybody is supposed to take cognizance and have knowledge, that by its operation destroys all the value and commercial life that these warrants ever had or possessed."

Again, on page 5, the brief says:

"Now it will be insisted that the moment this act of Congress went into effect that it was public notice to

the world that these warrants would be replaced by another and different class of security, and the moment that the redemption and cancellation of that particular security was performed it became dead as commercial paper and can be impeached, though it fall into the hands of an innocent holder."

If these propositions of the brief mean, as they seem to mean, that, by its own vigor and operation, the act of June 20, 1874, abolished the sewer certificates—put them out of existence as contracts and evidence of indebtedness, whether they had been redeemed or not under the provisions of the sixth section of the act of June 20, 1874 (18 Stats., 118–119), and abolished those upon which this suit is brought, as well as that $65,000 of such certificates which never were presented or redeemed, as found in finding 2 (R., 10), then the proposition of counsel is, we respectfully submit, simply preposterous—preposterous, first, because no such legislative immorality is even hinted at in the act of Congress; but, on the contrary, the act simply "*authorizes*" the Sinking Fund Commissioners to exchange the "three sixty-five" bonds, provided for in the seventh section of the act, for like sums of the other classes of indebtedness mentioned in the preceding section of the act. (See last clause of section 7, 18 Stats., 120.) No act of Congress attempted, either in words or inferentially, to abolish any valid existing indebtedness without the consent of the creditor, or to change the terms of these securities, or the times of maturity thereof.

2. Such act of repudiation, had it been attempted by Congress, is beyond the power of Congress; this because that, although the constitutional prohibition against impairing the obligation of contracts is, in terms, confined to the States, yet the fundamental rights of prop-

erty and rules of common honesty are as obligatory upon Congress as upon other legislative bodies. (Sinking Fund Cases, 99 U. S., 718–719.)

3. Congress has given an interpretation of its prior action of 1874, regarding these sewer certificates, directly at war with the position that they, in so far as outstanding at the date of the act of June 20, 1874, were, by that act, put out of existence; this is done by the act of June 6, 1880 (21 Stats., 284), where the Court of Claims is given jurisdiction to render judgment upon, amongst others, "all sewer certificates, all sewer taxes not heretofore converted into 'three sixty-five' bonds," &c. Under this act a large amount of judgments have been rendered in that court.

No act of Congress, therefore, has, of its own vigor, and independently of what may have been voluntarily done by the holder of sewer certificates under the provisions of said act of June 20, 1874, in funding the same, had any effect whatever in the way of either abolishing the certificates here sued on, or depriving them of their negotiability.

Therefore, this act of Congress gave the holders of sewer certificates and the purchasers thereof no other notice than that it was impossible for the holders of such certificates to exchange them, before maturity or after, so far as outstanding at the date of the act of June 20, 1874, as provided in said 7th section.

We are, therefore, remitted, so far as this point is concerned, regarding the effect and notice caused by the enactment of the law of June 20, to the question whether or not the certificates, on which judgment was rendered below, were, as a matter of law and fact, still in existence, at the time they were purchased by Ritchie and Cornell, as stated in finding No. 6 (R., 12, 13), and, in contemplation of law, were then unredeemed, as between the District and *bona-fide* purchasers.

The next point in the brief which we care to remark about is the one stated on page 4, where it seems to be insisted that there never was any power to issue these sewer certificates; and the case of St. Joseph Township *v.* Rodgers, 16 Wallace, 659, is cited to show that because of this lack of power to issue the certificates, they are void in the hands of a *bona-fide* purchaser. If this proposition means that the original issue of these sewer certificates was without authority of law, then it is a proposition flying directly in the teeth of the statute under which they were issued, and in the face of the views and holding of the courts and of the authorities which have treated them as valid issues ever since the date of their issue in 1873, involving, moreover, an ignoring of the acts of Congress, recognizing them as valid indebtedness, and enabling the holders thereof to sue in the courts.

To these views of the case we now turn.

The act of the Legislative Assembly of June 26, 1873, (see this act in opinion of Court of Claims in Fendall's Case, 16 Court of Claims, page 116,) in the 7th section thereof, is the statute authorizing the issue of these certificates. That section reads as follows:

"SEC. 7. That the said Board of Public Works are hereby authorized to issue certificates of indebtedness for work done, and to be done, under the provisions of this act, in denominations of fifty dollars, or any multiple of that sum, *payable to bearer*, with interest semi-annually from the date of their issue, at the rate of eight per centum, countersigned by the commissioners of the sinking fund and registered by the comptroller of the District, to an amount not exceeding in all the sum of two million one hundred and twenty thousand dollars, and not exceeding the amount chargeable to private property, as aforesaid, for work done under the provisions of this act, and payable, not exceeding one-fourth of said sum, at the end of each year from the respective dates of issue, which certificates shall be receivable at any time in payment of such

assessments as may be made under the provisions of this act."

The Court of Claims holds (16 Court of Claims, 117), regarding this question of negotiability, in the following words, speaking of the sewer certificates:

"They were payable to bearer. *Being thus made negotiable, they immediately became merchantable securities*, well known in Washington and other places, where they were offered for sale and sold in open market; and soon, to a large extent, they passed into the hands of assignees, who purchased them for valuable consideration."

The court then proceeds to consider the effect of the act of Congress of June 20, 1874, upon these certificates. The court finds, as a fact, that more than nineteen-twentieths of the $2,120,000 of certificates issued under that act had, prior to the abolition of the Board of Audit by the act of March 14, 1876, been redeemed, but the $65,000 of said bonds named in the findings of fact (R., 10) were still outstanding.

The court then finds (p. 119) that the act of June 16, 1880, (21 Stat., 284,) gave the Court of Claims jurisdiction of these unredeemed certificates; upon some of which the Fendall suit was prosecuted.

The court notices four defenses set up in that case:

First. That the obligations were never the obligations of the District, but of the Board of Public Works.

Second. That the whole class were invalid, as issued in violation of law.

Third. That they are not countersigned by Commissioners, as required by the Legislative Assembly.

Fourth. That all claims that had matured more than three years before the commencement of the action were barred as simple-contract debts.

The court held that none of these defenses were good, and remarks that investors were led, by their confidence in the good faith of the Government, to place their money in the securities issued by officers appointed by the President and the Senate, acting under a statute of the Legislative Assembly, created by public law of Congress for the government of the District, over which Congress had exclusive jurisdiction; that the District had had the benefit of the money paid for the certificates; that the act of June 16, 1880, was manifestly passed for the purpose of destroying all such defenses as were set there up; that if any defects in the certificates originally existed, the act of 1880 had cured the defects; but that in sending them to the court Congress did not design to preclude exceptional defenses to particular certificates not applicable to the class. The court also considers the defense made in the opposing brief, to wit, that the abolition, by the act of 1874, of the means provided for paying the certificates was an abolition of liability thereon, and repudiates that view totally, (see p. 123 *et seq.*,) and thereupon proceeds to render judgment for the amount of the certificates, with interest.

This case was decided in 1880; was acquiesced in by the Government, which took no appeal, and thus the adjudication has become the accepted law of these certificates, settling the proposition that they were negotiable instruments within the meaning of the law merchant, as is held in the case at bar, that *bona-fide* purchasers thereof were designed by Congress to be protected, and were protected; that the law of June 20, 1874, had no effect in abolishing the validity of those then outstanding, and that they were good in the hands of the holders.

It is thus seen that the case cited in the opposing brief, of The Mayor *v.* Ray, 19 Wall., 478, as explained in the case of Cleborne County *v.* Brooks, 111 U. S.,

408, has nothing whatever to do with the present case. That case, of Mayor *v.* Ray, is explained simply as meaning (we here quote the language of the court) that—

"As the city (of Memphis) had no *express* power to borrow money, or to issue the commercial paper, and, in their view, no general power by which it was necessarily implied, the warrants, *when once paid* in for taxes, were nothing but *redeemed vouchers* and *functus officio*, and ceased to have any validity, and that the said officers had *no authority to reissue them;* that it was an *unauthorized* use of the city's credit, and an attempt to borrow money, and to issue commercial paper *without any power or authority to do so;* and that the plaintiff's claim of being a *bona-fide* holder could not avail him."

These cases, therefore, decide that where there is a *lack of power* in the municipality to reissue, there, the purchaser must take notice of *that radical defect of power*, as distinguished from an "irregularity," and purchases at his peril where there is a want of power to issue, under any conditions or circumstances.

In the case at bar, the power to issue is unquestionable and express in the said seventh section, and, as we shall see further on, the case at bar presents no case of unlawful reissue (for we do not pretend that there was any power to reissue these certificates after their valid redemption). But the case at bar presents a case of such culpable negligence and, as to one of the officers, felonious attempt at redemption and of issue as does not constitute a taking up or redemption of the certificates at all, *as against a bona-fide purchaser*, and that as to him they were, in contemplation of law, never out of circulation or redeemed.

We cannot suppose that the brief means (page 4 *et seq.*) that the *original* issue of these sewer certificates was without power, but that the brief probably means

that the reissue, through felony of the clerk Farnham, in February or March, 1876, was without authority and void. If that is what the brief means, then the proposition is entirely *insignificant* in this case, because it is not claimed that the clerk had power to reissue the bonds; but, on the contrary, the proposition of the claimant is, as already stated, that the negligent attempt at redemption, which is described in the findings of fact, especially in finding 2 (R., 10), and which was, as between the defendant and *bona-fide* purchasers of unmatured certificates, no redemption at all, in contemplation of law, under any circumstances; and, especially, no redemption in view of the provisions of the sixteenth section of the act of Congress of March 3, 1875 (18 Stats., 505). This section requires the Commissioner of the District, and of the Sinking Fund, to "destroy, by burning, all bonds, sewer certificates and other obligations of every kind in the city of Washington, of the city of Georgetown, or the District of Columbia whatsoever heretofore paid or redeemed by either of the said Boards under the direction of the Secretary of the Treasury, and shall preserve the evidence thereof as shall be prescribed by the Secretary."

To this point, to wit, that no redemption of these certificates in contemplation of law, and as between the defendant and claimant, ever occurred, we shall come again presently.

Another point in the brief which it may be proper to specifically notice is thus stated on page 6:

> Admitting that these certificates were negotiable when issued—that is, transmissible by delivery or endorsement—this character was destroyed by the act of June 20, 1874."

There are a multitude of reasons why this proposition cannot be accepted as sound, some of which have

already been stated. One of them is, that the act of June 20, 1874, did *not* give notice that the certificates would be redeemed by giving "three sixty-five" bonds in their stead. The notice given by this act was precisely what it was found, by the court below, to be. The court below thus meets this point stated at the top of page 6 of the opposing brief. We quote from the record, page 15:

"The defendant further contends that under the operation of the act of June 20, 1874, (18 Stats., 119, 120,) all the certificates became due August 1, 1874, and were thus overdue and subject to any defense existing at the time of the claimant's purchase. We do not concur in this position. By this act a new bond, running from August 1, 1874, was created, into which the creditors of the District were *permitted, at their option*, within a limited time, to fund their claims."

So that the first reason why this proposition at the top of page 6 of the opposing brief is not sound is, that the act of Congress, as the mere reading of it shows, is not of the character imputed to it and gives no such notice as there stated. And it left, as already remarked, all certificates not, in contemplation of law, *and as between bona-fide purchasers and the District, redeemed*, to be in force precisely as if the act of 1874 had not been passed.

Another point in the opposing brief which it may be best to specifically notice is that stated on pp. 6 and 7, and to which Jones on Railroad Securities, and the Mayor *v.* Ray, (19 Wallace, 4–8,) are cited.

This proposition is that these municipal obligations, although negotiable in the sense that the holder may sue on them in his own name, yet such *bona-fide* purchaser takes them subject to the risk as to whether they have been lawfully and properly issued. Here again we are not certain what the brief means in regard to

what is spoken of on page 7 as the irregular and fraudulent manner in which the certificates were put in circulation. If it means that the original issuing of the certificates was such that a *bona-fide* purchaser could acquire no title that was not subject to the kind of defences named in Mayor *v.* Ray, (19 Wall., 478,) then the answer to that proposition has already been noticed, and will be hereafter more fully noticed.

The certificates were issued under the authority of section 7 above quoted and as is expressed on their face. (See Exhibits A, B, C, D, E, R., 5 to 9, inclusive.) There was neither lack of power nor irregularity, nor any other infirmity or defect in their original issuing, nor in their character as "payable to bearer;" and their absolute negotiability has been, from the beginning, as we have seen, 16 Ct. of Cls. R., 117, recognized in the courts and by all the officers of the Government having to do with the matter; and their issue, and the authority therefor, fully satisfy the claim made on said page 7 of defendant's brief, namely, that they could only be issued by *special legislation, and for the city purposes, and in the construction of sewers.*

This is precisely what the certificates were issued for, and what the law authorized them to be issued for, and what *bona-fide* purchasers were entitled to regard them as issued for, and what the court (16 Ct. Cls., 117) found the District got for them. In other words, the power to issue them made payable to bearer, as expressed on the face, was in said section 7 express, unambiguous, and positive. Hence, with such a case as this, the case of the Mayor *v.* Ray, *supra*, has nothing whatever to do. Indeed the case of Mayor *v.* Ray is explained in Cleborne County *v.* Brooks, 11 U. S., 408, in a way to show that it has no possible application to such a case as the one at bar, of the regular and lawful issue of certificates payable to bearer in virtue of express legislative

authority. This case of the Mayor *v.* Ray, was a suit on Treasury warrants drawn by the Mayor and Recorder of Nashville, on their City Treasurer, payable to bearer, delivered for work done for the city. *They were afterwards received by the tax collector in payment of taxes, and, after so received, were sold for such price as they would bring to raise money for city purposes.* The plaintiff had purchased the warrants sued on, and was shown to *have had notice* that they had been paid in and received for taxes; but the court below held that the corporation had a right to issue promissory notes, and that, if this was the usage, they would, when sold and reissued, be obligatory on the city.

Now it was regarding this sort of a case of *reissued certificates* sold to one who *knew* that they had been paid off, the court states as follows (111 U. S., 408) in its comments on Mayor *v.* Ray. The court there says:

"All the justices of this court held that when originally issued they were valid as vouchers and evidences of actual indebtedness, and the three dissenting justices held with the court below that they were valid obligations when reissued; but a majority of the court concurred in reversing the judgment, and four of the justices were of the opinion that, as the city had no express power to borrow money or to issue commercial paper, and, in their view, no general power by which it was necessarily implied, the warrants when *once paid in for taxes were nothing but redeemed vouchers, and functus officio, and ceased to have any validity, and that the city officers had no authority to reissue them;* that it was an unauthorized use of the city's credit, and an attempt to borrow money and to issue commercial paper without any power or authority to do so; and that the plaintiff's claim of being a *bona-fide* holder could not avail him."

These authorities, such as Mayor *v.* Ray, therefore, have no application whatever to a case where the issue

of the instrument and the making of it negotiable is expressly authorized by statute, as was the original issue in this case.

There is another reason why these authorities have here no material application, which is, that the defense set up is not one going to the original issue of the security, but is simply the defense that the redemption of the bond, such as is described in the findings of fact, constitutes a defense. To that point we now turn.

How thoroughly this court has settled the liability of municipal corporations, whether the city, county, or township, to *bona-fide* holders of their paper (when issued in pursuance of the authority of law, as in this case) according to the rules applicable under the law merchant to negotiable instruments, is shown by a multitude of recent cases. On this point the general doctrine of this court is thus expressed, (Warren County *v.* Marcy, 97 U. S., 104):

"We have substantially held, that if a *municipal* body has lawful power to issue bonds or other negotiable securities, dependent only upon the adoption of certain preliminary proceedings, such as the proper election of the constituent body, the holder in good faith has a right to assume that such preliminary proceedings have taken place, if the fact be certified on the face of the bonds themselves, by the authorities whose primary duty it is to ascertain it;" and in every such case the purchaser, before maturity of such instruments, is entitled to all the protection applicable to purchasers of other negotiable securities under the law merchant.

For this see—

County of Warren *v.* Marcy, 97 U. S., 96–104, and cases there cited.

Thompson *v.* Perrine, 103 U. S., 817, *et seq.*

Thompson *v.* Perrine, 106 U. S., 589–593, and cases cited.

Cromwell *v.* Sac County, 96 U. S., 51.

This court in Pana *v.* Bowler, (107 U. S., 541,) says:

"We cannot follow the decision of the Supreme Court of Illinois in Lippincott *v.* Town of Pana, *ubi supra*, without overruling a uniform current of the decisions of this court, beginning with Commissioners of Knox County *v.* Aspinwall, (21 How., 539,) and continuing down to the present time. The rights of the *bona-fide* holder of negotiable municipal bonds, as we have stated them in this opinion, are too firmly settled by the decisions of this court to be shaken."

This case of Knox County decides, in effect, precisely what we have cited from Warren Co. *v.* Marcy, *supra;* and the court in this case of Pana *v.* Bowler, *supra*, expressly rules the present point, namely: That municipal bonds, like other negotiable bonds, when payable to bearer, are subject to the ordinary rules of commercial paper.

The court, on page 542, after citing the authorities showing that the holder of paper payable to bearer is *prima facie* entitled to the protection of a *bona-fide* purchaser, adds the following words:

"*And municipal bonds, payable to bearer, are subject to the same rules as other negotiable paper.* (*Cromwell v. Sac County, 96 U. S., 51.*)"

What we have now said shows that the certificates in suit were originally issued under valid authority, as recited on their face, and that they are negotiable instruments within the law of commercial paper.

This being so, the only legal question in the case is this, to wit:

Where negotiable securities of a municipality, which had been duly issued and in circulation, were, before maturity, bought by a *bona-fide* purchaser for value, without notice of any defense to their payment, and when there was in fact *nothing* on the bonds to indicate that they had ever been paid or cancelled, in such case

is it a good defense to the suit on the bonds, by such purchaser, that, as a matter of fact, prior holders of such bonds had presented them for audit and redemption to the municipal authorities, had received certificates therefor, and had surrendered them, and that they were, thereupon, so negligently cancelled and kept that an officer of the corporation could, and did, readily, remove all evidences of the alleged cancellation, and sell them, before maturity, to *bona-fide* purchasers; and that this negligence was done and suffered when express statute law required all cancellations in said cases to be "destruction by burning"? (18 Stats., 505.)

Such, we think, is the exact legal question which this case presents.

In reply to it, we suggest the following points:

It will be observed that the question here presented is not whether an officer or agent of the municipal corporation can issue negotiable securities, which will bind the municipality, in the hands of *bona-fide* purchasers, when there existed no authority to issue such securities.

So, also, the present question is not whether a *bona-fide* purchaser of negotiable securities can collect them when they purport to be bonds of a corporation, issued in a case where the municipality had full power to issue them under conditions prescribed by law, and which bonds, *in fact*, were either never issued at all, but were put in circulation by forgery or other fraud, or were issued when the conditions precedent, prescribed by the statute before they could be lawfully issued, had, in fact, not been complied with.

On the contrary, the question here presented is, when reduced to its essential elements, this: Whether, where municipal negotiable securities have, in fact, been *duly* and lawfully put into a general circulation, and remain in such circulation, and were, before maturity, so negligently taken up and cancelled, (this negligence being

in violation of express statute,) as that an agent of the corporation could and did sell them, and this without any evidence upon the bonds, or otherwise, of their cancellation or taking up, to *bona-fide* purchasers, and this before due, does such taking up and cancellation constitute, in law, any taking up or cancellation? Or, on the other hand, is such negligent taking up and cancellation, in contemplation of law, worthless and insignificant as in favor of the municipality, and are the bonds still outstanding and good in virtue of the original and lawful issuing and circulation thereof?

To this last question we submit there can be, fairly, but one answer, and that in the negative, to wit, that as against such *bona-fide* purchasers, taking the bonds under such conditions, the original issue remains good as against the corporation, and the loss resulting from the wrongful reissue must fall upon the municipality.

In support of this proposition, it may be useful to state here some preliminary suggestions.

One of these suggestions is this: That where a municipality, or even a sovereign State, becomes party to a negotiable instrument, in virtue of due authority of law, there every such municipality or State is bound by all the rules of the commercial law applicable to such securities. This doctrine is thoroughly settled and quite familiar, and is stated by the Supreme Court of the United States in the case of Cook *et al. v.* The United States, 91 U. S., 389, in these words:

"It was conceded in the argument that when the United States become party to commercial paper they incur all the responsibilities of private persons under like circumstances. This is in accordance with the decision of this court. (The Floyd Acceptances, 7 Wall., 557; U. S. *v.* Bank of Metropolis, 15 Peters, 377.) As was well said in the last case, 'from the daily and unavoidable use of commercial paper by the United States, they are as much interested as the community at large can be in maintaining these principles.' It was

also conceded that genuine Treasury notes, like those now in question, were, before their maturity, part of the negotiable paper of the country. We so held at the last term in Vermilye & Co. *v.* Express Co., 21 Wall., 238."

The same thing is strongly stated in U. S. *v.* State Bank, 6 Otto, 36, and cases cited. We cannot think that this proposition can be seriously questioned. There is no conflict of decisions regarding it; and that a municipality stands, in this regard, in no better position than the Government, will hardly be asserted.

Another proposition somewhat preliminary in its character, and which seems, by cross-examination of claimant's witnesses, to be relied on by defendant in the present case, is one which we meet in the words of the Supreme Court as found in Cromwell *v.* County of Sac, 96 U. S., 60:

"The purchaser, (of municipal negotiable securities,) at whatever price, takes the benefit of the entire obligation of the maker. Public securities and those of private corporations are constantly fluctuating in price in the market, one day being above par and the next day below it, and often passing within short periods from one-half of their nominal to their full value. Indeed, all sales of such securities are made with reference to prices current in the market, and not with reference to their par value. It would introduce, therefore, inconceivable confusion if *bona-fide* purchasers in the market were restricted in their claims upon such securities to the sums they had paid for them. This rule in no respect impinges upon the doctrine that one should make only a loan upon such paper, or takes it for collateral security for a precedent debt, may be limited in his recovery to the amount advanced or secured."

The court cites, in support of this, 6 Cushing, 469; 1 Zab., 565; 2 Hill, 301; 8 Met., 40; 36 Iowa, 305.

Another preliminary proposition may become applicable in the present case, (though probably not,) and it

is this: that claimant and his assignor, Ritchie, even if they had notice of facts tending to put a diligent person on inquiry, or even had the actual notice, might, notwithstanding, purchase a perfect title to these securities from a party who had become, within the sense of the law, a *bona-fide* purchaser. The Supreme Court states this rule in the case last cited, of Cromwell *v.* The County of Sac, in these words:

"The rule has been too long settled to be questioned now, that whenever negotiable paper has passed into the hands of parties unaffected by previous infirmities, its character as a valuable security is established, and its holder can transfer it to others with like impunity. His own title and right would be impaired if any restrictions were placed upon his power of disposition.

"This doctrine, as well as the one which protects the purchaser without notice, says Story, is indispensable to the security and circulation of negotiable instruments, and it is founded upon the most comprehensive and liberal principles of public policy. The only exceptions to this doctrine are those where the paper is absolutely void, as when issued by parties having no authority to contract, or its circulation is forbidden, by law, from the illegality of its consideration, as when made upon a gambling or usurious transaction."

The cases we cite below sustain and enforce this familiar rule.

Still another proposition here applicable is this: That such purchasers of such municipal securities are entitled to the full benefit of their purchase, unaffected by the consideration of the hardship involved in requiring the municipality to repay obligations once redeemed, and also unaffected by any circumstances merely tending to excite suspicion regarding the purchased obligation, (as, for example, in this case, suspicion arising from the alleged fact that some of the bonds had coupons pasted upon them.)

The doctrine here last stated is affirmed by the Supreme Court in the case last cited of Cromwell *v.* The County of Sac, 96 U. S., reading from pages 57, *et seq.* :

"Obligations of municipalities, in the form of those in suit here, are placed by numerous decisions of this court on the footing of negotiable paper. They are transferable by delivery, and, when issued by competent authority, pass into the hands of *bona-fide* purchasers for value before maturity, freed from any infirmity in their origin. Whatever fraud the officers authorized to issue them may have committed in disposing of them, or however entire may have been the failure of consideration promised by parties receiving them, these circumstances will not affect the title of subsequent *bona-fide* purchasers for value before maturity, or the liability of the municipalities. As with other negotiable paper, mere *suspicion that there may be a defect of title in its holder, or knowledge of circumstances which would excite suspicion as to his title in the mind of a prudent man, is not sufficient to impair the title of the purchaser;* that result will only follow where there has been bad faith on his part. Such is the decision of this court, and substantially its language, in the case of Murray *v.* Lardner, reported in 2 Wall., where the leading authorities on the subject are considered."

This case of Murray, *v.* Lardner (2 Wall., 110,) is a case of *bona-fide* purchase of stolen securities, and has direct bearing on all parts of this case.

In this case, the circumstance of suspicion, which did not render the purchased bond dishonored paper, was the fact that overdue and unpaid coupons for interest were attached to it at the time of its purchase.

As bearing upon the point that claimant might, with full notice of defense, purchase a perfect title from parties holding, without notice, as *bona-fide* purchasers, the doctrine of this case is succinctly and fully stated in the syllabus, paragraph three, in these words :

"Though a purchaser may have notice of infirmities in its origin, such a purchaser of a municipal bond from

a *bona-fide* holder, who obtained it for value before maturity, takes it as freed from such infirmities as it was in the hands of such holder."

Another rule of law ought here to be distinctly stated. It is this: That in cases of this kind, where culpable negligence or active fraud has been the means of inflicting loss of a purchaser of corporation obligations, and the wrong was done by a trusted agent or officer of the corporation, there the acts of fraud are, in law, those of the corporation. This doctrine is strongly stated by Chief-Justice Shaw, in the case of Atlantic Bank *v.* Merchants' Bank (76 Mass., 551), a case approved by the Supreme Court of the United States in U. S. *v.* State Bank (96 U. S., 36). Farnham's act, therefore, was that of the District of Columbia. He, although known *to be drinking heavily*, "was the trusted employé of the Board of Audit, and had the key of the safe." (Finding IV, R., 12.)

Although most of the propositions now stated are somewhat preliminary in their nature, yet they in fact cover the substance of this case, and answer the defense, which is based upon the facts regarding redemption and cancellation, found on pages 10 to 13 of the Record.

But we now proceed to an examination of the case in the light of authorities bearing, perhaps, more directly upon our exact case.

And we here restate, in still another form of words, what we conceive to be the real legal question raised by this defense of cancellation; we state it thus:

Where municipal obligations of a negotiable character are, as a matter of law, duly authorized to be issued and put and kept in circulation, and they are, as a matter of fact, in such circulation, at any given time before their maturity, and are purchased by a *bona-fide*

purchaser before due, when so in fact in *actual* circulation, in such case it is no defense to the liability of the Government or municipality that such issue and circulation were the result of fraud, negligence, and wrongdoing, or even theft, by agents or officers of the municipality or Government whose bonds were so put in circulation.

Applied to the present case, this proposition means this:

Since it is true, as a matter of law, that the obligations in suit could be lawfully issued and in circulation, and in fact *were* lawfully issued and in circulation, then the fact that such circulation, as to the particular bonds in suit, was continued, and the bonds came into the hands of claimant as a *bona-fide* purchaser, before due, by means of the fraud and wrong-doing of the agent of the District of Columbia, constitntes no defense.

The first case which we cite in support of this proposition is that above quoted, of Cooke et al. *v.* The United States (91 U. S., 389).

The feature of that case which is here applicable is the one which brought the court to decide upon the question whether Jay Cooke & Co. *could* become *bona-fide* purchasers of the Treasury notes, which in that case they had sold or delivered to the Assistant Treasurer of the United States, in such sense as that the United States could not recover back from Jay Cooke & Co. the money which such assistant had paid them. And whether Jay Cooke & Co. *could* become a *bona-fide* purchaser of said Treasury notes, depended upon the question whether the Government had put them in circulation, in such sense as that they became the obligations of the Government. The fact was that the notes purchased by Jay Cooke & Co. were, in legal effect, forgeries, and had never been issued by the

United States, *except by means of the fraud of some party having access to said notes.* The notes were printed from genuine plates, and were fraudulently or surreptitiously issued. The court below instructed the jury that if the notes were printed in the Department already for issue, yet, if they were not *in fact issued*, the United States could recover. The issue to bind the Government *must be a physical act of an authorized officer.* This instruction the Supreme Court held to be erroneous, and reversed the judgment; and, on page 404, says that this instruction by the judge is too narrow. The court held that an issue of such notes, through the negligence or wrong-doing of the agents of the Government, was an issuing of the notes which enabled Jay Cooke & Co. to become *bona-fide* purchasers, and enabled them to hold them as against the Government as its valid obligations. This same thing was decided October 13, 1873, in a case in the Circuit Court of the United States for the Eastern District of Pennsylvania, wherein the same party (Jay Cooke & Co. and the United States) were parties; and the court held that such default and negligence of the Government in allowing the notes to become circulation, bound the Government and enabled Jay Cooke & Co. to purchase a good title as against the Government.

We are unable to see why the doctrine of this case is not conclusive of the present one. There the instruments obtained circulation through the default and negligence of the Government. They were never, in fact, issued, except through a fraud, and yet the court held that, being printed on genuine plates, and in a condition where they were perfect, when they had passed through all the printing processes requisite to make them good obligations, upon due issue, then they stood in the same category in which the coin of the United States stands with reference to its circula-

tion, (see p. 404;) and the court in effect held that the Government, having thus become party to these instruments, became liable for their negligent or fraudulent issue, even though the issue was only secured through and by means of a felony.

Applied to the present case, it is equivalent to holding that these bonds never were, in legal contemplation, taken up or withdrawn from their original circulation. The case of Cooke, *supra*, is much stronger in favor of the Government than the present one, because there never was any genuine circulation or issue, and the only circulation ever given to the notes was secured through a felonious issue; whilst in the case at bar there was an issue of the very bonds in suit; and the only defense is one which bases itself upon such culpable attempt at redemption as involved not only gross negligence, but an express violation of the statute *which prescribed a particular method of cancellation*, and that method "destruction by burning." This requirement is equivalent to an express enactment, by the statute, that the public should be entitled to complete protection. It was equivalent to saying, by statute, to the public that any bonds might be safely deemed, by it, as not redeemed or cancelled which remained in existence; because all that were, in fact, cancelled were by law required to be absolutely destroyed by fire. A case of more gross and inexcusable negligence could scarcely be stated, even if looked at in this aspect, as to the method of cancellation and excluding from view the fact that the corporation, through one of its officers, stole the bonds and sold them.

It will be seen by the findings of fact that the bonds were put where there was no physical obstruction whatever to their being taken, at the pleasure of of any employé in the office: that they were in full sight of every one behind the counter. They were not

only omitted to be burned, but they were left in the complete power of the man, Farnham.

The case at bar is surely more than brought within the doctrine of Jay Cooke & Co. *v.* the United States.

These bonds were, therefore, never, in contemplation of law, out of circulation or redeemed or cancelled.

We, however, desire to direct the court's attention to some other analogous cases, even though this may not be necessary.

In the case of the State of California *v.* Wells, Fargo & Co., 15 California, 336, decided in 1860 by Justices Baldwin, Field, and Cope, is one much like the case last cited of Jay Cooke & Co., in its legal elements. The facts in that case are indicated accurately, as also are the principles of law decided, by the syllabus. It reads thus:

"Warrants drawn by the comptroller of the State, delivered to the payees thereof, and by them indorsed in blank, were presented, by the holders, to the State treasurer, and, on payment, were delivered to him. They were afterwards stolen from the office of the treasurer. The warrants, on their face indicating a just and legal claim against the State, came into the hands of defendants, (Wells, Fargo & Co.,) ignorant that they had been stolen. Defendants present them to the treasurer, and in lieu thereof received State bonds payable to bearer, under the funding act of 1857, and part with them. The State sues for the bonds or their value. *Held*, That the action does not lie; that defendants, having received the bonds *bona fide*, and without fraud, for warrants apparently good against the State, are not liable to this form of action.

The mere reception of the bonds, though issued by mistake, does not render defendants liable.

Bonds so issued are negotiable, and bind the State in the hands of an innocent assignee.

A man dealing with State securities is not bound to search the books and records of the State officers before buying claims against the State.

The bonds in this case constitute a payment of the warrants, and if the rule that voluntary payments are not recoverable, be not applicable, still the equity of the defendant is equal to that of the plaintiff, and the courts will not interfere."

An inspection of this case will show that, in order to reach the conclusion which the court did reach, it was requisite for the court to hold, and the court did hold, that Wells, Fargo & Co. could acquire such an interest in these stolen bonds as that *they were* entitled to treat them as their own, and to pay them out as such to the officers of State, provided they did it innocently, and this the same as if they were money.

The court upon this point (p. 344) says:

"We should regard the issuance of these bonds as a payment of the old claim. We see no difference between these bonds, which are negotiable upon their face, and having a fixed value in the markets, and circulate as money, and the same amount in bank-notes or coin, so far as the rule is concerned which gives protection to such payment."

There are several points in this case which have direct application to the one at bar. One is that point where the court holds that a citizen, dealing with State securities, *is not bound to search the books and records of the State officers before buying claims against the State.* The court remarks, touching this point, on p. 342, in these words:

"But it cannot be held that every man who deals with State securities is bound to search the books and records of the State officers before proceeding to make an assignment of the claim against the State. We do not know that these books and papers are subject to public inspection. If they were so held, it might lead to very embarrassing results."

Applied to the present case, this rule renders utterly immaterial that part of the stipulation on pp. 41 and

42 of the Record which says that the cancellation of these bonds was entered upon the books of the District. As a matter of fact, the books of the District were not open to inspection, and, if they had been, there is no laches or want of diligence, as against the claimant or his assignors, in failing to search the books to see whether bonds were stolen.

Another feature of this case of Wells, Fargo & Co. is applicable to the one at bar. It is this: The statutes of California require that "on the payment of any warrants by the Treasurer, drawn by the Comptroller, on him, *he shall take the receipt of the person to whom the money is paid, on the back of the warrant*, and carefully file away and preserve the same, indorsing thereon the number," &c,, (p. 343). This the officers omitted to do, and allowed, by their negligence, these bonds to get into circulation and to be disposed of to innocent holders, without any such receipt being indorsed thereon. Touching the effect of this omission to follow the law in cancelling the bonds so taken up, the court says (p. 343):

"In this case in appears that the law had prescribed a method" (receipt indorsed on the back) "of proceedure, being by itself a sufficient protection and notification of the character of the claim; and the failure of the officers of the Government to follow the law ought not to be turned to the injury of a citizen, and made the occasion of ruining him for being no wiser than those officers to whom this class of duties is specifically intrusted."

The court then proceeds to enforce and illustrate the hardship of denying to the defendants a title, honestly acquired, in these bonds, owing to the negligence of the officers in failing to indorse a receipt on the back thereof, and owing to their thus being put into a condition where they could be sold, and were sold, or transferred, to the defendants, as *bona-fide* purchasers.

As applied to the case at bar, this signifies that the failure of the District to destroy, by fire, these bonds, and their culpable negligence in allowing them, through their officers, to be put in circulation, is such negligence as will throw upon the municipality or the Government the liability to bear the loss resulting from such negligence. On this point, that where one of two parties shall suffer, he shall who enabled the loss to be inflicted, the court remarks (bottom of pp. 343 and 344):

"We see no difference between a State and an individual in the application of this principle. The State should act with as much justice, and be held to as strict a responsibility, as one of its own citizens in these matters of dealing and contract; and it is better that she should be held responsible for the acts of her agents than that she should reap the benefits of fraud committed upon innocent third persons by those agents under cover and color of authority."

The cases that we have now cited, it will be found, are really the result of one of the settled and most familiar rules of the law of commercial paper. It is this: That where the maker of commercial negotiable paper so deals with it as that it is stolen from his possession and put into circulation, through the act of the thief, and, before maturity, passes into the hands of a *bona-fide* holder, without notice of the wrong, there the *bona-fide* holder takes a complete title, and the maker of the note cannot set up, as a defense, the larceny.

This doctrine is stated in 1 Edwards on Bills and Notes, (3d edition,) section 406, side page 309, in these words, when speaking of stolen bills:

"It is now settled that the title of an indorsee for value can only be defeated by showing that he acted in bad faith in taking the bill; and the true question for the jury is held to be whether the purchaser took the bill in good faith. Gross negligence may be evidence of *mala fides*, but it is not the same thing."

In section 437, quoting from Chief Justice Shaw in the case of Wheeler *v.* Guild, 20th Pickering, he there says:

"The law in regard to bills of exchange and promissory notes is so framed as to give confidence and security to those who receive them for valuable consideration in the ordinary course of business, when payable to bearer, or indorsed in blank, so as to be transferable by delivery; and in general a party taking such a bill under such circumstances has only to look to the credit of the parties to it, and the legality and genuineness of the signatures and indorsements, so that if such a note or bill be made without consideration, or be lost or *stolen*, and afterwards negotiated to one who, having no knowledge of these facts, for a valuable consideration, in the usual course of business, his title is good, and he shall be entitled to receive the amount. * * * To so great an extent is this principle carried, that in regard to bank notes, and in most respects in regard to the other bills and notes transferable by delivery, *that the title and possession are considered to be inseparable*, and it will be presumed that the party thus in possession of a bill holds it for value until the contrary appears, and the burden of proof is on the party impeaching his title."

The case of Murray *v.* Lardner, (2 Wall., 110,) already cited, is one where Lardner sued Murray, in *detinue*, to recover for three negotiable railroad bonds, of $1,000 each, stolen from Lardner, and sold by the thief to Murray, a broker. The court had charged the jury (p. 113) that the burden was on Murray to show that there were no grounds of suspicion known to him when he purchased, and that unless he showed this he could not recover; and the Supreme Court reversed the judgment on account of this charge. The case contains a valuable review of the cases; and, on page 121, the result of them is given in these words:

"The possession of such paper carries the title with it to the holder. The possession and title are one and inseparable.

"The party who takes it before due for a valuable consideration, without knowledge of any defect of title, and in good faith, holds a valid title against all the world.

"Suspicion of defect of title, or the knowledge of circumstances which would excite such suspicion in the mind of a prudent man, or gross negligence on the part of the taker, at the time of the transfer, will not defeat his title. *That result can only be produced by bad faith on his part.*

"*The burden of proof lies on the person who assails the right claimed by the party in possession.*

"Such is the *settled* law of the court, and we feel no disposition to depart from it."

Such is this case of Murray *v.* Lardner; and we confess that we do not see why its doctrines are not conclusive of this case.

To reply to it, that it is not applicable because in that case the stolen bonds were not pretended to have been taken up and cancelled, whilst in the case at bar they had been, and were *functus*—were blank paper—is no reply at all, and begs the whole question.

Such a grossly negligent taking up and cancellation is, in law, no taking up at all; and the wicked negligence and the actual larceny by the corporation, through its agent, (see 10 Gray, 551,) is *not* in law or morals any payment, and leaves the bonds in full life as to such *bona-fide* purchasers.

This case of Murray *v.* Lardner has been constantly reaffirmed by the Supreme Court; as in 11 Otto, 557; 9 Otto, 682; 4 Otto, 754; 21 Wall., 359; 21 Wall., 323, and many other cases.

The case of Welsh *v.* Sage, (47 N. Y., 143,) decided in 1872, is one where trover was brought to recover the value of three one-thousand-dollar coupon bonds of the Milwaukee & St. Paul R. R. Co., which were payable to bearer. The bonds had been delivered by Welsh,

plaintiff, to a broker to take to the defendant, Sage, who was an officer of said company.

The syllabus of the case indicates fully what was decided. It reads thus:

"The title of a purchaser, for value, of stolen negotiable paper, including bonds payable to bearer, is not impaired by negligence. It will only be defeated by proof of fraud or bad faith. Notice of such facts as will put a prudent man upon his guard will not defeat his recovery thereon.

"Plaintiff made advances upon coupon bonds of the M. and St. P. R. R. Co., which originally were accompanied by, or had attached to them, certificates, stating in substance that upon the surrender of the certificate and bond the holder was entitled to full-pay preferred stock. These certificates were referred to in the body of the bond. When the bonds were transferred to plaintiff the certificates were not with them—

"*Held*, That while the absence of the certificate might be a circumstance of some weight in determining the question, yet of itself it did not prove fraud or bad faith."

The court, on page 146, says:

"The law may be regarded as *settled* that a purchaser, for value advanced, of negotiable paper, including bonds, is not bound to exercise such care and caution as wary, prudent men would exercise. Negligence will not impair his title. It is a question simply of good faith in the purchaser. Unless the evidence makes out a case upon which a jury would be authorized to find fraud or bad faith in the purchaser, it is the duty of the court to direct a verdict."

The court cites 35 N. Y., 67; 29 N. Y., 249; 20 Howard (U. S.), 365; 2 Wall., 121; 4 Ad. and El., 867.

The court proceeds:

"Notice of the defense to defeat a recovery means, substantially, notice of such facts as would make a defense, or would necessarily lead the mind to believe in its existence; not merely notice of such facts as would

put a prudent man on inquiry." * * * "The rule puts the consequence of *neglect or misfortune* upon the party upon whom they have fallen; upon those who have *negligently put such paper in circulation or from whom it is stolen.* It sustains the ready and safe transfer of negotiable paper to those who honestly purchase it for value advanced."

The last language of the court, in this case of Welsh and Sage, is, in substance, a statement of what is a maxim of the law, that where one or two innocent parties must suffer, he shall suffer whose default *enabled* the loss to be inflicted.

In the present case this application is obvious. The most culpable negligence of some of the officers of the defendant, and the actual larceny and fraud of another, not only rendered the loss possible, but in fact inflicted it.

And we submit that if such a criminally culpable taking up of negotiable papers, before due, shall, by this court, be held to be a withdrawal from circulation, and a destruction of the instrument, then it will be a new experience in the judicial history of commercial paper. It is a settled rule of the law merchant, which is expressed by Lord Mansfield in Burbridge *v.* Manners (3 Camp., 6, 193; and see Byles on Bills, sec. 171), that payment of bills before due does no more extinguish them than if the note were merely "*discounted.*" "It is the duty of bankers to make some memorandum on bills and notes which have been paid, and if they do not the holders of such securities cannot be affected by any payment made before they were due."

In the case at bar, though such memorandum was faintly made by one officer, yet it was so made that another could readily remove all traces of it, and he did so remove them, and sold them before due. (See find-

ings 2 to 6 inclusive, R., 10–12.) Shall this corporation be allowed, in this or any court, to say, as against their victims, that *such* a payment and cancellation is an extinguishment of the security?

Such is the question the case presents. Is it not too much to say that the question is there a defense? is conclusively answered in the negative by the highest and, indeed, all respectable authorities, and by the principles of justice and reason.

SAM'L SHELLABARGER,
J. M. WILSON,
For Claimant.

Office Supreme Court U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1888.

THE DISTRICT OF COLUMBIA, appellant, vs. THOMAS W. CORNELL. } No. ~~310.~~ 55

~~STATEMENT OF THE CASE.~~

Brief for appellant

In the Supreme Court of the United States.

OCTOBER TERM, 1888.

THE DISTRICT OF COLUMBIA, appellant, *vs.* THOMAS W. CORNELL. } No. ~~816.~~ 1-3-

STATEMENT OF THE CASE.

This is an appeal from a judgment rendered by the Court of Claims on the 22d day of May, 1885, in favor of the appellee, for the sum of $7,750, upon debts of the District of Columbia, due and payable January 1, 1876.

Thomas W. Cornell brought suit in the Court of Claims to recover upon certain sewer certificates issued by the Board of Public Works of the District of Columbia. These certificates were issued in accordance with the terms of legislative enactment, and were secured by pledge to the commissioners of the sinking fund of assessments, made in accordance with act approved June 26, 1873, against private property benefited by improvement, and receivable in payment of such assessments. These certificates were redeemed by the board of audit

pursuant to the provisions of act of Congress passed June 20, 1874, which said act was an act of substitution for that of the legislative assembly approved on the 26th day of June, 1873. By this act of Congress the authority vested in the Board of Public Works by the aforementioned act of the legislative assembly was repealed, and no more certificates were to be issued. And by section 8 of the same act of Congress it was further provided:

> That no property shall be advertised for sale or sold for the collection of any assessment, authorized by the legislative assembly by the act entitled "An act creating drainage and sewerage sections in the cities of Washington and Georgetown in the District of Columbia, and providing for the payment of the construction of sewers and drains therein and issuing certificates therefor," approved on the twenty-sixth day of June eighteen hundred and seventy-three, until otherwise ordered by Congress; and it shall be unlawful to issue any further certificates of indebtedness authorized by said act.

That the certificates sued on had been redeemed by the board of audit by exchanging them for certificates of that board by converting them into District 3.65 bonds, and that they were surrendered to that board at the time of their redemption and properly cancelled. That since the surrender, redemption, and cancellation of these certificates in the manner aforesaid, they were surreptitiously and fraudulently abstracted from their place of proper custody and were then afterwards put in circulation, and became the property by purchase of the appellee, whereupon he brought his suit in the Court of Claims.

ASSIGNMENT OF ERROR.

(1) The court erred in deciding that the certificates were negotiable paper.

(2) The court erred in deciding that the assignment of these certificates to claimant by Ritchie gave the claimant a cause of action against the District of Columbia.

(3) The court erred in giving the claimant a judgment against the District of Columbia for the sum of $7,750.

ARGUMENT.

There is but one proposition that will be urged by the appellants in support of this appeal. It will be observed that on July 1, 1873, the board of public works for the District of Columbia issued certificates of indebtedness, commonly called sewer certificates. By act of Congress approved June 2, 1874, the board of public works was abolished, and a board of audit created, authorized to audit the indebtedness of the District, including these certificates, and to issue therefor auditor's certificates, known as the 3.65 bonds.

Under the operation of this act nearly all of the sewer certificates were redeemed, and cancelled by writing in ink the words "cancelled by the board of audit." When so stamped they were tied up in bundles and placed on a shelf in the room where the act of cancellation had been done. This was the condition of these certificates when they were stolen by one of the clerks, and, after removing the words of cancellation, in their altered state were put in circulation.

It will be contended that these certificates could not in any sense of the word be treated as negotiable instruments. These certificates were the creatures of legislative enactment; they had no value or effect upon the market, except that given them by force of the statute. Any one purchasing a certificate of this character takes it *cum onere*; that is, must take it subject to all legal defenses that will defeat its payment.

Bonds issued by a municipal corporation, if issued in pursuance of a power conferred by the legislature, are valid commercial instruments; but if issued by such a corporation which possessed no power from the legislature to grant such aid they are invalid even in the hands of innocent holders. So says the Supreme Court in *Saint Joseph Township* v. *Rogers* (16 Wallace, p. 659). These certificates were possessed of a certain commercial character up to a certain time, because they had been issued by legislative authority, which, being a public act, was public notice to the world of the authority for such issue. But at a later date, by act of Congress approved June 20, 1874, these very certificates were withdrawn from circulation, by redemption and cancellation, in the manner and by the persons authorized and charged to execute that duty. Here was a public act, a law of Congress, of which every body is supposed to take cognizance and have knowledge, that by its operation destroys all the value and commercial life that these certificates ever had or possessed.

It was after this law of Congress went into operation that these certificates were put in circulation. It will not do to answer this proposition that all the bonds were not

surrendered, and that it was left optional with the holder to rest satisfied with this class of security or accept another in lieu of it. The fact yet remains that a law of Congress had been passed authorizing a substitution of another security for this class, and that the holders of these certificates, or a majority of them, had availed themselves of this law.

Further, it must be borne in mind that by the same act of Congress the present value of these certificates had been destroyed, by the enactment of a clause forbidding the collection of any assessment by the sale of property, as authorized by the act of legislative assembly, by virtue of which these certificates were issued. (Act June 20, 1874, ch. 337, § 8).

Now, it will be insisted that the moment this act of Congress went into effect that it was public notice to the world that these certificates would be replaced by another and a different class of security, and the moment that the redemption and cancellation of that particular security was performed that it became dead as commercial paper, and can be impeached, though it fall into the hands of an innocent holder.

If this be not so, how could a municipal corporation protect itself? It is held, bound by its public obligations, and it must be accorded the benefit of all public acts. Then, it must follow that the holder of this paper gained no such title to it as made it unimpeachable as commercial paper coming through the regular channels of trade into the hands of an innocent purchaser. Being stripped of its value by the operation of an act of Congress it was

the duty of the purchaser to know such fact, and ignorance of it can afford him no protection.

Admitting that these certificates were negotiable when issued, that is, transferable by delivery or indorsement, this character was destroyed by the act of June 20, 1874. That act gave notice that such certificates would be redeemed by giving 3.65 bonds in their stead, and that the method of collection provided for by the original act of June 26, 1873, was withdrawn. This was sufficient to put any person upon inquiry, and such certificates as were taken subsequently were taken subject to all legal defenses. Purchasers thereof before maturity are not entitled to the protection afforded to innocent holders of negotiable instruments.

There is a distinction between a corporation bond and a certificate of indebtedness, in respect to their negotiability and commercial character. The former is clothed with these ingredients, and they may be inferred from the fact of the authority to issue them. But ordinary corporation orders, warrants, and certificates of indebtedness are not within this principle. Although negotiable in form and negotiable in character, so far as to enable the holder to sue in his own name, they do not exclude inquiry into the legality of their issue, or preclude defenses in the hands of any holder. (Jones on Railroad Securities, p. 283, sec. 283.)

> Custom and usage may have assimilated them to regular commercial paper as to make them negotiable, that is, transferrable by delivery or endorsement. This quality renders them more convenient for the purposes of the holder, and has undoubtedly led to

> the idea, so frequently, but we think erroneously, entertained, that they are invested with that other characteristic of commercial paper—freedom from all legal and equitable defenses in the hands of a *bona fide* holder.

This is the language of the Supreme Court, to be found in the case of *The Mayor* v. *Ray*, 19 Wallace, p. 478. Then it will be contended that these certificates sued upon are not invested with the character and incidents of commercial paper, so as to render them in the hands of bona fide holders absolute obligations to pay, however irregularly or fraudulently they may have been put in circulation.

If this doctrine be incorrect, a municipal corporation could be involved in irretrievable bankruptcy. These certificates are only evidences of indebtedness, and are but necessary instruments for carrying on the machinery of municipal government, and for the anticipation of the collection of taxes. To treat them as commercial paper would be an abuse of their true purpose and character.

The case at bar, it is respectfully urged, falls within this class. The certificates sued upon are mere due bills, or evidence of indebtedness for a particular and specific purpose. Their issue was for the payment of a special class of work, and not in any manner to provide for the payment of the debts generally of the District. They were such evidences of indebtedness as could only have been issued by special legislation, and for the city purposes, in the construction of its sewers. They were certificates for this class of city work, and alone for this work. They could not be lawfully issued for any other purpose. The face of the paper itself is notice that its

validity depends upon the regularity of its issue. It belongs clearly to that class issued for commercial convenience, that in the language of the Supreme Court is not freed from all legal and equitable defenses in the hands of a *bona fide holder*. His claim to be a bona fide holder will always be subject to this qualification. (*Ibid.*)

Then, further, as to the non-negotiable character of these certificates. It will be observed that they were made payable out of a particular fund by legislative enactment, to wit, the sinking fund of assessments, made in accordance with act approved June 26, 1873. These assessments were made liens upon property owners, and their collection was enforced by law. The certificates in question were made payable by this method; in other words, were payable out of moneys to be collected by the method declared by the statute. These certificates were not made payable unconditionally and at all events, and in this particular lack the negotiable characteristic of commercial paper. The instrument must be made payable unconditionally and at all events in order to be negotiable. (Daniel, Neg. In., vol. 1, sec. 111, p. 34.)

In accordance with these principles the character of the instruments as bills or notes is destroyed. They are made payable out of a particular fund, and their payment then becomes conditional on the sufficiency of that fund, which may prove inadequate for their payment. They can not, therefore, be treated as negotiable instruments. (*Ibid.*, p. 39.)

In conclusion, it is respectfully submitted that these certificates can not be treated as negotiable instruments for the reasons set up in support of this appeal. In the

first place, because they lack the characteristics that could alone clothe them with that element, and because they had been withdrawn from circulation, thereby extinguishing their market value by public act of the law-making power, that alone gave them any commercial life, of which the purchaser was bound to take notice. In other words, that the purchaser took them at his peril. It is therefore respectfully submitted that the judgment of the Court of Claims be reversed.

R. A. HOWARD,
Assistant Attorney-General.
W. I. HILL,
Assistant Attorney.

9134——2

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In the Supreme Court of the United States.

OCTOBER TERM, 1888.

THE DISTRICT OF COLUMBIA, appellant, *vs.* THOMAS W. CORNELL. } No. 316.

STATEMENT OF THE CASE.

This is an appeal from a judgment rendered by the Court of Claims on the 22d day of May, 1885, in favor of the appellee, for the sum of $7,750, upon debts of the District of Columbia, due and payable January 1, 1876.

Thomas W. Cornell brought suit in the Court of Claims to recover upon certain sewer certificates issued by the Board of Public Works of the District of Columbia. These certificates were issued in accordance with the terms of legislative enactment, and were secured by pledge to the commissioners of the sinking fund of assessments, made in accordance with act approved June 26, 1873, against private property benefited by improvement, and receivable in payment of such assessments. These certificates were redeemed by the board of audit

pursuant to the provisions of act of Congress passed June 20, 1874, which said act was an act of substitution for that of the legislative assembly approved on the 26th day of June, 1873. By this act of Congress the authority vested in the Board of Public Works by the aforementioned act of the legislative assembly was repealed, and no more certificates were to be issued. And by section 8 of the same act of Congress it was further provided:

> That no property shall be advertised for sale or sold for the collection of any assessment, authorized by the legislative assembly by the act entitled "An act creating drainage and sewerage sections in the cities of Washington and Georgetown in the District of Columbia, and providing for the payment of the construction of sewers and drains therein and issuing certificates therefor," approved on the twenty-sixth day of June eighteen hundred and seventy-three, until otherwise ordered by Congress; and it shall be unlawful to issue any further certificates of indebtedness authorized by said act.

That the certificates sued on had been redeemed by the board of audit by exchanging them for certificates of that board by converting them into District 3.65 bonds, and that they were surrendered to that board at the time of their redemption and properly cancelled. That since the surrender, redemption, and cancellation of these certificates in the manner aforesaid, they were surreptitiously and fraudulently abstracted from their place of proper custody and were then afterwards put in circulation, and became the property by purchase of the appellee, whereupon he brought his suit in the Court of Claims.

ASSIGNMENT OF ERROR.

(1) The court erred in deciding that the certificates were negotiable paper.

(2) The court erred in deciding that the assignment of these certificates to claimant by Ritchie gave the claimant a cause of action against the District of Columbia.

(3) The court erred in giving the claimant a judgment against the District of Columbia for the sum of $7,750.

ARGUMENT.

There is but one proposition that will be urged by the appellants in support of this appeal. It will be observed that on July 1, 1873, the board of public works for the District of Columbia issued certificates of indebtedness, commonly called sewer certificates. By act of Congress approved June 2, 1874, the board of public works was abolished, and a board of audit created, authorized to audit the indebtedness of the District, including these certificates, and to issue therefor auditor's certificates, known as the 3.65 bonds.

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It will be contended that these certificates could not in any sense of the word be treated as negotiable instruments. These certificates were the creatures of legislative enactment; they had no value or effect upon the market, except that given them by force of the statute. Any one purchasing a certificate of this character takes it *cum onere;* that is, must take it subject to all legal defenses that will defeat its payment.

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Further, it must be borne in mind that by the same act of Congress the present value of these certificates had been destroyed, by the enactment of a clause forbidding the collection of any assessment by the sale of property, as authorized by the act of legislative assembly, by virtue of which these certificates were issued. (Act June 20, 1874, ch. 337, § 8).

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The case at bar, it is respectfully urged, falls within this class. The certificates sued upon are mere due bills, or evidence of indebtedness for a particular and specific purpose. Their issue was for the payment of a special class of work, and not in any manner to provide for the payment of the debts generally of the District. They were such evidences of indebtedness as could only have been issued by special legislation, and for the city purposes, in the construction of its sewers. They were certificates for this class of city work, and alone for this work. They could not be lawfully issued for any other purpose. The face of the paper itself is notice that its

validity depends upon the regularity of its issue. It belongs clearly to that class issued for commercial convenience, that in the language of the Supreme Court is not freed from all legal and equitable defenses in the hands of a *bona fide holder*. His claim to be a bona fide holder will always be subject to this qualification. (*Ibid.*)

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In accordance with these principles the character of the instruments as bills or notes is destroyed. They are made payable out of a particular fund, and their payment then becomes conditional on the sufficiency of that fund, which may prove inadequate for their payment. They can not, therefore, be treated as negotiable instruments. (*Ibid.*, p. 39.)

In conclusion, it is respectfully submitted that these certificates can not be treated as negotiable instruments for the reasons set up in support of this appeal. In the

first place, because they lack the characteristics that could alone clothe them with that element, and because they had been withdrawn from circulation, thereby extinguishing their market value by public act of the law-making power, that alone gave them any commercial life, of which the purchaser was bound to take notice. In other words, that the purchaser took them at his peril. It is therefore respectfully submitted that the judgment of the Court of Claims be reversed.

R. A. HOWARD,
Assistant Attorney-General.
W. I. HILL,
Assistant Attorney.

9134——2

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 1347

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE, PLAINTIFF IN ERROR,

vs.

FRANK W. ROLLINS, DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, DISTRICT OF COLORADO, SITTING AT DENVER.

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WHIPPLE & PIERSON, LEGAL PRINTERS, DENVER, COLO., OCTOBER 10, 1888.

Transcript of Record.

1 Pleas. In the Circuit Court of the United States for the district of Colorado, sitting at Denver.

Be it remembered, that heretofore and on, to wit, the 1st day of February, A. D. 1887, came Frank W. Rollins, by Messrs. Teller & Orahood, his attorneys, and filed in said court his complaint, and sued out of and under the seal of said court, a writ of summons against the Board of County Commissioners of the County of Lake. And the said complaint is in words and figures as follows, to wit:

Complaint.

2 In the Circuit Court of the United States, for the district of Colorado.

FRANK W. ROLLINS, Plaintiff,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE, Defendant.

Complaint.

Frank W. Rollins, the plaintiff, complains of the Board of County Commissioners of Lake County, defendant, and states to the court:

That he is a citizen of and a resident of the State of New Hampshire.

That the defendant is a municipal corporation, existing in pursuance of the constitution and laws of the State of Colorado.

That the said defendant was so incorporated and acting in the year 1876, and has been so incorporated and acting ever since the 1st day of August, 1876. That under the laws of the said state, in force on said first day of August, 1876, the said defendant, acting as a board, had the exclusive control of the affairs of the said County of Lake, in said state, with full power and authority

To make such orders concerning the property belonging to the county as they might deem expedient.

Second—To examine and settle all accounts of the receipts and expenses of the county, and to examine and settle and allow all accounts chargeable against the county, and when so settled they might issue county orders therefor.

Third—To build and keep in repair county buildings and cause the same to be insured, or to provide suitable rooms for county purposes.

3 *Fourth*—To apportion and order the levying of taxes, as provided by law, and to borrow upon the credit of the county a sum sufficient for the erection of county buildings, or meet the current expenses of the county in the case of a deficit in the county revenue.

Fifth—To represent the county and have the care of the county property and the management of the business and concerns of the county, in all cases where no other provision was made by law.

Seventh—To establish one or more election precincts in any township, as the convenience of the inhabitants may require.

Eighth—To lay out, alter or discontinue any roads running through the county, and to perform such other duties respecting roads as might be required by law.

Lastly—To perform such other duties as were or might be prescribed by law.

That the said duties and powers of the said board, as above specified, continued to belong to the said board until the 24th day of March, 1877; since which time the powers of the said board have been as above set forth, excepting in regard to the fourth clause above set forth; at which date the said fourth clause was amended so as to read as follows: "To apportion and order the levying of taxes, as provided by law, and to contract loans in the name and for the benefit of the county, for the purpose of erecting necessary public buildings, making or repairing public roads or bridges, when such loans have been authorized by a vote of the legal voters of the county, and for the payment of the debts of the county, contracted in accordance with law prior to the first day of July, A. D. 1876.

The plaintiff further states that by the provisions of law, existing in 1876 and ever since that time, it was provided that no account against the county should be allowed by the said board unless the same should be made out in separate items, and the
4 nature of each item stated, and where no specific fees were allowed by law, the time actually and necessarily devoted to the performance of any service charged should be specified, and that it should be verified by affidavit, and that the said board should, if necessary, have power to hear evidence in respect to the said account. Said laws further provided that upon the disallowance of an account, in whole or in part, the person presenting the account might appeal from the finding of the said board to the District Court of the said county; and that, upon the allowance of such account, an order should be drawn by the County Clerk, signed by the chairman of the board and attested by the clerk, specifying the nature of the claim and the amount thereof, and the person to whom it was due, and that the said account should be kept upon file and a record made of all orders allowed and issued by the board.

Plaintiff further shows that in pursuance of the said statutes the general form of the order adopted by the said board was as follows, to wit:

County Treasurer.

No. . . . . LEADVILLE, COLO., ... 188

Treasurer of Lake County,

Pay to . . . . . or bearer,

. . . . . $\frac{}{100}$ Dollars,

out of . . . . . fund, on account of

. . . . . .

By order of Board of County Commissioners.

Attest: . . . . . *County Clerk.*

. . . . . *Chairman.*

$ . . . . .

That upon the allowance of any account said blank form would be filled out with the number and date thereof, the name of the person to whom issued, or whose account was allowed, and the amount thereof, and the nature of the services for which the account was allowed and the name of the fund upon which it was drawn, which said order would then be signed by the Chairman of the Board and attested by the Clerk and de-
5 livered to the person entitled thereto.

That at various dates between the 6th day of June, 1879, and the 15th day of May, 1885, the said Board audited and allowed the accounts of a large number of individuals and issued and ordered county warrants to be issued therefor; which said warrants were issued in accordance with law and for services rendered to the said county; that among said warrants were the following warrants, that is to say, warrants numbered as hereinafter set forth, bearing date as herein specified, and to the persons as herein named, for the purposes as herein set forth, and of the amount as herein stated, to wit:

304	June 7, 1879, G. Caffery, witness,	$	5 00
394	July 7, 1879, J. B. Search, "	$	2 90
841	Oct. 1, 1879, D. M. Hartman, "	$	2 20
1941	March 1, 1880, J. Erickson, " district court,	$	2 50
1942	" " A. Mueller, " " "	$	2 50
2510	April 13, 1880, J. S. Peabody, petit juror dist. court,	$	27 50
2557	May 3, 1880, E. T. Wolverton, witness justice court,	$	8 80
2638	" " " L. R. Tucker, sheriff's fees,	$	12 00
2658	" " " John Connoly, witness justice court,	$	8 00
5509	Feb'y 9, 1881, James Atchison, bailiff,	$	64 00
5511	Feb'y 9, 1881, J. S. Miller, deputy sheriff,	$	168 50
5530	Feb'y 9, 1881, M. Adams, under sheriff,	$	158 36
5533	Feb'y 9, 1881, L. R. Tucker, sheriff,	$	164 20
5538	Feb'y 9, 1881, L. R. Tucker, board of prisoners,	$	945 60
5540	Feb'y 9, 1881, J. S. Miller, deputy sheriff,	$	154 65
	5663 Feb'y 10, 1881, R. A. Johnson, deputy sheriff,	$	88 00
6	5732 Feb'y 11, 1881, F. R. Jeffrey, deputy sheriff,	$	109 00
	5742 Feb'y 11, 1881, L. M. Van Buren, deputy sheriff,	$	52 15
6064	Mch. 9, 1881, Streeter & Chapin, board of jury,	$	148 20
6375	May 2, 1881, Joseph Cody, witness dist. court,	$	46 50
6843	May 27, 1881, D. Maher, witness dist. court,	$	2 00
6871	May 27, 1881, F. Scheer, special deputy,	$	7 50
6950	June 7, 1881, W. H. Milligan, witness grand jury,	$	2 50
6983	June 7, 1881, W. H. Milligan, witness justice court,	$	2 20
6992	June 9, 1881, R. H. Tucker, jailor,	$	10 00
6998	June 9, 1881, S. W. George, witness dist. court,	$	2 50
7033	June 9, 1881, W. G. Pennington, witness dist. court,	$	2 50
7049	June 9, 1881, A. J. Owen, witness dist. court,	$	2 50
7052	June 9, 1881, J. E. Milds, witness dist. court,	$	2 50
7076	June 9, 1881, M. A. Adams, deputy sheriff,	$	14 45
7467	Aug. 2, 1881, J. Fitz Brind, grand juror,	$	35 00
7580	Aug. 20, 1881, G. G. Turney, witness dist. court,	$	7 00

7691	Sept. 8, 1881, J. F. Dougan, constable,	$117 15
7700	Sept. 8, 1881, J. Burnett, witness county court,	$ 2 50
7701	Sept. 8, 1881, J. Oakley, witness county court,	$ 2 50
7721	Sept. 10, 1881, St. Vincent's Hospital, board of sick paupers,	$144 51
7725	Sept. 10, 1881, T. B. Powers, justice's fees,	$109 70
7737	Oct. 3, 1881, R. A. Johnson, witness dist. court,	$ 10 00
7738	Oct. 3, 1881, R. A. Johnson, collecting licenses,	$184 00
7740	Oct. 3, 1881, J. B. Lawson, witness dist. court,	$ 21 00
7751	Oct. 3, 1881, J. W. Christie, court stenographer,	$240 00
7759	Oct. 3, 1881, B. & W. Moriarity, janitors court house,	$180 00
7766	Oct. 3, 1881, Patrick Marle, witness dist. court,	$ 12 70
7790	Oct. 4, 1881, J. S. Miller, deputy sheriff,	$249 50
7807	Oct. 4, 1881, G. S. Staver, witness dist. court,	$ 10 50
	7810 Oct. 4, 1881, J. W. Calvin, assistant jailor,	$140 00
7	7812 Oct. 4, 1881, Hotel Windsor, board of jury,	$100 00
	7813 Oct. 4, 1881, W. R. Macomb, bailiff,	$ 68 00
7829	Oct. 5, 1881, Charles Saunders, witness, dist. court,	$ 2 50
7837	Oct. 5, 1881, J. B. Stansell, juror, dist. court,	$ 5 00
7841	Oct. 5, 1881, L. W. Bacon, juror, dist. court,	$ 10 00
7842	Oct. 5, 1881, J. H. Playter, witness, grand jury,	$ 5 00
7871	Oct. 5, 1881, Alex. Brighton, witness, grand jury,	$ 2 50
7876	Oct. 5, 1881, J. Stevenson, witness, grand jury,	$ 5 00
7884	Oct. 12, 1881, John Covney, witness, dist. court,	$ 2 50
7885	Oct. 12, 1881, Wm. Barnes, coroner's jury,	$ 2 50
7886	Oct. do do do do do	$ 2 50
7888	Oct. 12, 1881, McMillen & Co., goods for poor,	$1065 96
7891	Oct. 12, 1881, Elizabeth Parker, witness dist. court,	$ 10 00
7892	Oct. 12, 1881, Emma Nelson, witness dist. court,	$ 10 00
7893	Oct. 12, 1881, P. H. Riley, witness grand jury,	$ 2 50
7894	Oct. 12, 1881, M. Murray, witness, dist. court,	$ 2 50
7899	Oct. 12, 1881, M. Wolley, witness, grand jury,	$ 2 50
7925	Oct. 13, 1881, G. N. Easom, petit juror,	$ 37 50
7927	Oct. 13, 1881, F. Farwell, witness, dist. court,	$ 46 40
7940	Oct. 14, 1881, J. McDonald, constable,	$ 30 90
7958	Oct. 17, 1881, Michael Leary, dist. court witness,	$ 15 00
7960	Oct. 17, 1881, C. G. Graff, petit juror, dist. court,	$ 15 00
7975	Nov 1, 1881, H. W. Dunning, grand juror,	$ 5 00
8001	Nov. 1, 1881, R. B. Bunker, witness, dist court,	$ 15 00
8027	Nov. 1, 1881, J. G Forpey, witness, grand jury,	$ 2 50
8064	Nov. 3, 1881, J. W. Calvin, ass't jailor,	$159 00
8092	Nov. 14, 1881, J. S. Miller, witness, grand jury,	$ 7 50
8093	Nov. 14, 1881, C. Bane, witness, dist. court,	$ 15 40
8094	Nov. 14, 1881, W. R. Callicott, witness, dist. court,	$ 2 50
8095	Nov. 14, 1881, W. H. Bright, petit juror,	$ 5 00
	8096 Nov. 14, 1881, R. H. Muirhead, grand juror,	$ 25 00
8	8106 Nov. 14, 1881, W. F. Freeman, witness, grand jury,	$ 10 00
	8112 Nov. 14, 1881, H. S. Macallum, deputy sheriff,	$ 38 85
8117	Nov. 14, 1881, J. W. Calvin, ass't jailor,	$ 35 00
8124	Nov. 15, 1881, L. H. Wilmot, petit juror,	$ 72 50

8125	Nov. 15, 1881, J. B. Hanna, petit juror,	$ 22 50
8126	Nov. 15, 1881, Cyrus Reill, petit juror,	$ 2 50
8350	Dec. 2, 1881, R. A. Johnson, county collector,	$ 25 00
8360	Dec. 2, 1881, R. A. Johnson, bailiff,	$100 00
8384	Dec. 1881, J. P. DeMattas, justice,	$ 60 15
8406	Dec. 8, 1881, J. F. Dougan, constable,	$ 49 25
8453	Jan. 3, 1882, J. F. Dougan, constable,	$ 66 10
8457	Jan. 4, 1882, E. A. Vaughn, witness, dist. court,	$ 7 50
8458	Jan. 4, 1882, E. H. Hinkle, witness, dist. court,	$ 5 00
8511	Jan. 6, 1882, R. S. Ames, clerk of election,	$ 24 00
8638	Feb. 2, 1882, E. F. Wolverton, witness, grand jury,	$ 2 50
8700	Feb. 2, 1882, E. F. Wolverton, witness, district court,	$ 2 70
8701	do do do do do do do	$ 2 50
8866	Feb. 14, 1882, T. W. Leonard, witness, dist. court,	$ 7 50
8874	Feb. 14, 1882, J. G. Kelley, witness, dist. court,	$ 2 50
8875	Feb. 14, 1882, Mrs. Ida Horton, witness, dist. court,	$ 2 50
8887	Feb. 14, 1882, J. P. DeMattos, witness, dist court,	$ 7 50
8947	Feb. 14, 1882, J. W. Christy, witness, county court,	$ 10 00
8949	Feb. 14, 1882, J. F. Peterson, witness, dist. court,	$ 7 50
8951	Feb. 14, 1882, C. E. Wyman, petit jury,	$ 2 50
8974	Feb. 15, 1882, Jane Flood, witness, dist. court,	$ 2 50
9001	March 1, 1882, D. H. Rutledge, petit juror,	$ 42 50
9006	March 1, 1882, J. G. Kelley, witness, dist. court,	$ 20 00
9221	March 12, 1882, Thomas B. Powers, judge canvasing board,	$ 25 00
9251	March 16, 1882, do do do justice of peace,	$ 57 95
9270	March 17, 1882, Joseph Pierce, county commissioner,	$ 25 00
9285	April 6, 1882, James Duncan, dep. sheriff,	$ 35 00
9286	April 6, 1882, John Bishop, dep. sheriff,	$ 35 00
9287	April 6, 1882, George W. Easum, dep. sheriff,	$ 45 00
9289	April 6, 1882, David Abrams, dep. sheriff,	$ 50 00
9302	April 6, 1882, W. H. Ryan, dep. sheriff,	$ 5 00
9304	April 6, 1882, T. Gilligan, dep. sheriff,	$ 5 00
9352	April 7, 1882, W. K. Clay, dep. sheriff,	$ 86 75
9357	April 7, 1882, G. G. White, co. attorney,	$200 00
9370	April 8, 1882, J. J. Crook, sup't schools,	$210 00
9862	June 3, 1882, W. Z. Ransom, petit juror,	$ 32 50
9944	F. Parker, special constable,	$ 6 40
10118	July 1, 1882, Leadville Undertaking Co., burying paupers,	$260 00
10146	Aug. 8, 1882, Wm. Fletcher, witness, dist. court,	$ 2 50
10401	Sept. 5, 1882, C. E. Baker, dep. sheriff,	$ 68 55
10488	Sept. 7, 1882, John S. Brady, witness, grand jury,	$ 6 20
10489	Sept. 7, 1882, M. J. Duggan, witness, grand jury,	$ 6 20
10504	Sept. 7, 1881, C. W. Fish, witness, dist. court,	$ 5 00
10510	Sept. 8, 1882, Sam McDowell, justice fees,	$ 50 00
10511	do do do do	$ 50 00
10512	do do do do	$ 50 00
10513	do do do do	$ 50 00
10514	do do do do	$ 50 00

10515	do do do do	$ 50	00
10516	do do do do	$ 50	00
10517	do do do do	$ 50	00
10518	do do do do	$ 50	00
10519	do do do do	$ 50	00
10520	do do do do	$ 50	00
10521	do do do do	$ 50	00
10522	do do do do	$ 50	00
10 10523	do do do do	$ 50	00
10524	do do do do	$ 50	00
10525	do do do do	$ 50	00
10526	do do do do	$ 50	00
10527	do do do do	$ 50	00
10528	do do do do	$ 50	00
10529	do do do do	$ 50	00
10551	do do do do	$ 78	50
10616	Oct. 4, 1882, J. C. Harkness, witness,	$ 23	60
10621	Oct. 4, 1882, D. H. Dougan, witness, dist. court,	$ 5	00
10624	Oct. 4, 1882, J. W. Malloy, witness, dist. court,	$ 2	50
10631	Oct. 4, 1882, W. H. Bartle, witness, dist. court,	$ 10	00
10632	Oct. 4, 1882, N. C. Neal, witness, dist. court,	$ 10	00
10697	Oct. 4, 1882, James Silvers, coroner fees,	$ 2	50
10704	Oct. 4, 1882, E. E. Baker, dep. sheriff,	$ 52	55
10707	Oct. 4, 1882, C. H. Perkins, dep. sheriff,	$ 55	00
10729	Oct. 4, 1882, W. W. Breeden, coroner,	$ 31	10
10749	Oct. 7, 1882, Richard Bray, witness, dist. court,	$ 5	80
10774	Oct. 4, 1882, C. H. Perkins, witness, dist. court,	$ 7	50
10818	Oct. 9, 1882, E. Cohn, grand juror,	$ 55	00
10828	Oct. 9, 1882, County Court, court costs,	$601	65
10839	Oct. 9, 1882, A. J. Shouse, witness, county court,	$ 6	10
10840	do do do do do do do	$ 6	10
10841	do do do do do do do	$ 6	10
10850	Nov. 8, 1882, W. S. Griffith, attorney's fees,	$ 30	00
10855	Nov. 8, 1882, Sam Jacobs, witness, dist. court,	$ 5	00
10861	Nov. 8, 1882, James Dennison, witness, dist. court,	$ 8	10
10869	Nov. 8, 1882, C. F. Horner, witness, dist. court,	$ 5	00
10883	Nov. 8, 1882, John Ritchie, juror, dist. court,	$ 5	00
10884	Nov. 8, 1882, John Quinn, juror, dist. court,	$ 32	50
10886	Nov. 8, 1882, C. H. Reed, juror, dist. court,	$ 5	00
11 10888	Nov. 8, 1882, P. J. Laughlin, juror, dist. court,	$ 45	00
10889	Nov. 8, 1882, G. L. Camp, juror, dist. court	$ 47	50
10891	Nov. 8, 1882, E. M. DeLappe, juror, dist. court,	$ 45	00
10894	Nov. 8, 1882, Pat Fahey, juror, dist. court,	$ 30	00
10896	Nov. 8, 1882, F. H. Stevens, juror, county court,	$ 2	50
10897	Nov. 8, 1882, do do do do do	$ 2	50
10898	Nov. 8, 1882, S. A. Stone, juror, county court,	$ 2	50
10899	Nov. 8, 1882, L. W. Dorr, juror, county court,	$ 2	50
10900	Nov. 8, 1882, do do do do	$ 2	50
10901	Nov. 8, 1882, S. A. Stone, juror, county court,	$ 2	50
10902	Nov. 8, 1882, E. E. Baker, witness, county court,	$ 2	50

10913	Nov. 8, 1882,	P. L. Keifer, coroner's juror,	$ 5 00
10914	Nov. 8, 1882,	F. W. Hopkins, coroner's juror,	$ 5 00
10927	Nov. 8, 1882,	B. & W. Moriarity, janitors, county court,	$180 00
10929	Nov. 8, 1882,	J. C. Carlin & Co., distributing ballot boxes,	$ 40 00
10937	Nov. 8, 1882,	do do registry books,	$ 40 00
10955	Nov. 8, 1882,	Dr. Breeden, coroner's inquest,	$ 52 60
10962	Nov. 9, 1882,	S. F. Finch, coroner's juror,	$ 5 60
10963	Nov. 9, 1882,	W. Hayburne, coroner's juror,	$ 5 00
10966	Nov. 9, 1882,	J. L. Pritchard, assessor,	$180 00
10969	Nov. 9, 1882,	C. M. White, costs in justice court,	$226 35
10978	Nov. 9, 1882,	Wm. Kellogg, dist. atty's fees,	$395 00
10979	Nov. 9, 1882,	do do do	$ 45 00
10980	Nov. 9. 1882,	do do do	$202 00
10981	Nov. 9, 1882,	James Flood, deputy sheriff,	$ 43 75
10991	Nov. 9, 1882,	Francis Rose, fees in justice court,	$300 00
10993	Nov. 10, 1882,	Thomas Lynch, fees in justice court,	$ 19 65
11091	Dec. 6, 1882,	J. L. Pritchard, assessor,	$180 00
12 11105	Dec. 6, 1882,	E. Baker, dep. sheriff,	$ 18 10
11106	Dec. 6, 1882,	F. Parker, dep. sheriff,	$ 70 00
11114	Dec. 6, 1882,	M. T. Ryan, election,	$ 25 00
11125	Dec. 6, 1882,	W. W. Breeden, coroner,	$ 48 00
11133	Dec. 6, 1882,	J. H. Kerwin, judge of election,	$ 50 00
11134	Dec. 6, 1882,	John Rule, judge of election,	$ 20 00
11139	Dec. 6, 1882,	C. G. Christian, judge of election,	$ 50 00
11141	Dec. 6, 1882,	J. G. Reynolds, juror dist. court,	$ 12 50
11147	Dec. 6, 1882,	B. O'Brien, judge of election,	$ 50 00
11154	Dec. 6, 1882,	H. R. Kirby, judge of election,	$ 30 00
11165	Dec. 6, 1882,	Jacob Buffet, judge of election,	$ 35 00
11172	Dec. 6, 1882,	J. H. McCarron, judge of election,	$ 20 00
11175	Dec. 6, 1882,	P. J. Quigley, judge of election,	$125 00
11194	Dec. 6, 1882,	W. Goodrich, clerk of election,	$ 15 00
11196	Dec. 6, 1882,	John Halfield, election,	$ 25 00
11198	Dec. 6, 1882,	G. A. Clark, judge of election,	$ 30 00
11199	Dec. 6, 1882,	B. Becker, judge of election,	$ 55 00
11202	Dec. 6, 1882,	T. C. Wetmore, rent of rooms for election,	$ 25 00
11206	Dec. 6, 1882,	P. Jennings, rent of house for election	$125 00
11210	Dec. 6, 1882,	M. S. Bruner, judge of election,	$ 30 00
11220	Dec. 6, 1882,	Stanton Charles, judge of election,	$ 40 00
11221	Dec. 6, 1882,	J. W. Christy, stenographer, dist. court,	$340 00
11227	Dec. 6, 1882,	David Howard, judge of election,	$ 25 00
11255	Dec. 6, 1882,	Wm. Kellogg, dist. att'y,	$330 00
11256	Dec. 6, 1882,	Wm. Kellogg, dist. atty,	$ 25 00
11257	Dec. 6, 1882,	do do do	$243 00
11261	Dec. 7, 1882,	H. T. Sale, rent county judge's chambers,	$ 37 50

11291	Jan. 17, 1883, N. Buckholtz, judge of election,	$	7 50
11296	Jan. 17, 1883, Joseph Stumpf, rent of house for election,	$	12 00
11298	Jan. 17, 1883, Arthur Niles, judge of election	$	15 00
13 11318	Dec. 17, 1883, Sam Jacobs, witness, grand jury,	$	10 00
11319	Jan. 17, 1883, Pat Shea, witness grand jury,	$	5 40
11322	Jan. 17, 1883, L. K. Rucker, witness grand jury,	$	5 40
11340	Jan. 17, 1883, Mrs. E. F. Seehorn, witness grand jury,	$	2 50
11344	Jan. 17, 1883, Joseph Carson, witness grand jury,	$	5 40
11350	Jan. 17, 1883, Thomas Lynch, witness grand jury,	$	7 50
11351	Jan. 17, 1883, Michael Ford, witness grand jury,	$	2 50
11359	Jan. 17, 1883, H. R. Martin, witness grand jury,	$	2 50
11367	Jan. 17, 1883, H. E. Williams, witness grand jury,	$	12 50
11359	Jan. 17, 1883, C. F. Hornes, witness grand jury,	$	2 50
11370	Jan. 17, 1883, P. R. Hull, witness grand jury,	$	2 50
11372	Jan. 17, 1883, T. F. Harkins, witness grand jury	$	2 50
11373	Jan. 17, 1883, P. P. Brown, witness grand jury,	$	10 00
11374	Jan. 17, 1883, B. O. White, witness grand jury,	$	10 00
11376	Jan. 17, 1883, B. S. Galloway, witness dist. court,	$	2 50
11377	Jan. 17, 1883, do witness grand jury,	$	2 50
11379	Jan. 17, 1883, James Gray, witness grand jury,	$	3 10
11380	Jan. 17, 1883, M. Buchanan, witness grand jury,	$	3 10
11382	Jan. 17, 1883, Patrick Corbett, witness grand jury,	$	2 90
11383	Jan. 17, 1883, D. M. Shiffield, witness grand jury,	$	2 50
11384	Jan. 17, 1883, Henry Murphy, witness grand jury,	$	5 00
11385	Jan. 17, 1883, Henry Pringer, witness grand jury,	$	3 50
11387	Jan. 17, 1883, S. S. Lane, witness grand jury,	$	2 50
11388	Jan. 17, 1883, John Cuddihee, witness grand jury,	$	2 50
11389	Jan. 17, 1883, A. P. Bentin, witness grand jury,	$	2 50
11390	Jan. 17, 1883, W. R. Gordon, witness grand jury,	$	2 50
11391	Jan. 17, 1883, J. R. Nickerson, witness grand jury,	$	2 50
11392	Jan. 17, 1883, J. W. Harwood, witness grand jury,	$	17 50
11393	Jan. 17, 1883, H. Johnson, witness grand jury,	$	5 00
11394	Jan. 17, 1883, Johanna Niso, witness, grand jury,	$	5 00
14 11395	Jan. 17, 1883, William Walsh, witness grand jury,	$	5 80
11396	Jan. 17, 1883, Frank Allen, witness gr'd jury,	$	5 80
11397	Jan. 17, 1883, Arthur Ranson, witness grand jury,	$	5 80
11398	Jan. 17, 1883, J. L. Newherd, witness grand jury,	$	5 80
11399	Jan. 17, 1883, E. P. Dempsey, witness grand jury,	$	2 50
11400	Jan. 17, 1883, J. P. McGrath, witness grand jury,	$	5 00
11402	Jan. 17, 1883, Sam Whitaker, petit juror,	$	7 50
11403	Jan. 17, 1883, H. W. Canney, grand juror,	$	37 50
11404	Jan. 17, 1883, D. H. Rutledge, grand juror,	$	37 50
11411	Jan. 17, 1883, J. B. Lynch, grand juror,	$	37 50
11415	Jan. 17, 1883, E. E. Baker, deputy sheriff,	$	55 40
11417	Jan. 18, 1883, H. D. Hall, grand juror,	$	37 50
11426	Jan. 18, 1883, D. F. Hayes, four shoes for poor,	$	4 00

11449	Jan. 18, 1883, H. S. Fawcett, dep. sheriff,	$ 15	50
11452	Jan. 18, 1883, W. J. Brennan, witness dist. court,	$ 2	50
11453	Jan. 18, 1883, R. C. Cummings, witness dist. court,	$ 2	50
11454	Jan. 18, 1883, Jennie Stevens, witness dist. court,	$ 2	50
11455	Jan. 18, 1883, J. B. Metcalf, witness dist. court,	$ 2	50
11456	Jan. 18, 1883, W. H. Bartle, witness dist. court,	$ 2	50
11457	Jan. 18, 1883, Minnie Simmons, witness dist. court,	$ 2	50
11458	Jan. 18, 1883, G. W. Brady, witness dist. court,	$ 2	50
11461	Jan. 18, 1883, Ollie Bartell, witness dist. court,	$ 2	50
11464	Jan. 18, 1883, S. G. Canfield, witness dist. court,	$ 2	50
11466	Jan. 18, 1883, A. F. Price, witness dist. court,	$ 2	50
11467	Jan. 18, 1883, Thomas Dillon, witness dist. court,	$ 2	50
11483	Jan. 18, 1883, H. C. Fawcett, witness dist. court,	$ 2	50
11486	Jan. 18, 1883, Henry Hughes, witness dist. court,	$ 7	50
11487	Jan. 18, 1883, C. M. Stark, witness dist. court,	$ 10	00
11488	Jan. 18, 1883, J. H. Herron, witness justice court,	$ 2	70
11490	Jan. 18, 1883, B. S. Galloway, witness coroner's court,	$ 2	50
11491	Jan. 18, 1883, J. H. Herron, witness coroner's court,	$ 2	50
15 11495	Jan. 18, 1883, B. F. Trackwell, register election,	$ 12	50
11499	Jan. 18, 1883, J. W. Christy, stenographer dist. court,	$ 30	00
11509	Jan. 25, 1883, J. A. Eade, witness dist. court,	$ 5	60
11512	Jan. 25, 1883, W. J. Logue, petit juror,	$ 5	00
11513	Jan. 25, 1883, C. M. Fish, petit juror,	$ 7	50
11516	Jan. 25, 1883, S. Ayers, grand juror,	$ 60	00
11518	Jan. 25, 1883, W. F. Parsons, grand juror,	$ 60	00
11520	Jan. 25, 1883, A. De Lappe, grand juror,	$ 37	50
11530	Jan. 25, 1883, Henry Kelly, county commissioner,	$100	00
11536	Jan. 25, 1883, W. E. Waldraven, constable,	$ 37	50
11539	Jan. 25, 1883, A. Lynch, constable,	$ 35	00
11540	Jan. 25, 1883, do do	$ 39	50
11542	Jan. 25, 1883, C. Davis, coroner's jury,	$ 2	50
11546	Jan. 25, 1883, James Flood, witness dist. court,	$ 5	00
11547	Jan. 25, 1883, do do do	$ 2	50
11562	Jan. 26, 1883, J. Martell, witness justice court,	$ 12	00
11564	Jan. 26, 1883, H. S. Fawcett, witness dist. court,	$ 2	50
11567	Jan. 26, 1883, J. Kuhlmeyer, county commissioner,	$ 16	50
11568	Feb. 5, 1883, B. Becker, deputy sheriff,	$ 22	30
11572	Feb. 5, 1883, Peter Becker, sheriff,	$ 37	50
11577	Feb. 5, 1883, F. Barker, dep. sheriff,	$ 6	85
11598	Feb. 5, 1883, B. Becker, dep. sheriff,	$ 11	80
11606	Feb. 5, 1883, J. F. Dugan, constable,	$120	70
11612	Feb. 5, 1883, Henry Perine, dep. sheriff,	$ 5	45
11613	Feb. 5, 1883, R. A. Field, witness dist. court,	$ 47	50
11614	Feb. 5, 1883, E. Morton, petit juror,	$ 15	00
11618	Feb. 5, 1883, Daniel Foutz, petit juror,	$ 15	00
11619	Feb. 5, 1883, G. C. Moore, petit juror,	$ 5	00
11620	Feb. 5, 1983, H. Merwin, petit juror,	$ 5	00

	11621	Feb. 5, 1883, F. E. Atwater, petit juror,	$ 5	00
16	11622	Feb. 5, 1883, A. Hathaway, petit juror,	$ 5	00
	11623	Feb. 5, 1883, C. M. Fish, petit juror,	$ 5	00
11624	Feb.	5, 1883, J. A. Byrne, petit juror,	$ 5	00
11625	Feb.	5, 1883, A. Paddock, petit juror,	$ 5	00
11626	Feb.	5, 1883, J. A. Phelan, petit juror,	$ 15	00
11627	Feb.	5, 1883, E. E. Baker, dep. sheriff,	$ 21	45
11629	Feb.	5, 1883, B. & M. Moriarity, janitors of court house,	$180	00
11631	Feb.	5, 1883, J. A. Krondall, petit juror,	$ 15	00
11633	Feb.	5, 1883, P. O'Sullivan, coroner's juror,	$ 2	50
11643	Feb.	5, 1883, W. W. Breeden, coroner's fees,	$ 77	50
11656	Feb.	5, 1883, J. A. Byrne, witness dist. court,	$ 12	50
11657	Feb.	5, 1883, R. L. Hill, witness dist. court,	$ 12	50
11658	Feb.	5, 1883, B. O. White, witness dist. court,	$ 5	00
11659	Feb.	5, 1883, M. Murray, witness dist. court,	$ 17	50
11660	Feb.	5, 1883, W. L. Leadford, witness dist. court,	$ 17	50
11665	Feb.	5, 1883, J. W. Newton, petit juror,	$ 32	50
11666	Feb.	5, 1883, David Kelley, petit juror,	$ 35	00
11667	Feb.	5, 1883, P. McNeelis, petit juror,	$ 20	00
11668	Feb.	5, 1883, John Kirby, petit juror,	$ 47	50
11681	Feb.	5, 1883, J. H. Casserleigh, witness dist. court,	$ 2	50
11682	Feb.	5, 1883, J. H. Connolly, grand juror,	$ 10	00
11684	Feb.	6, 1883, H. S. Fawcett, witness dist. court,	$ 7	50
11685	Feb.	6, 1883, B. S. G. Wheartly, witness dist. court,	$ 7	50
11688	Feb.	6, 1883, D. L. Kelly, witness dist. court,	$ 2	50
11689	Feb.	6, 1883, John Riley, witness dist. court,	$ 2	50
11690	Feb.	6, 1883, do do do	$ 12	00
11696	Feb.	6, 1883, J. L. Connolly, witness dist. court,	$ 15	00
11697	Feb.	6, 1883, do do do	$ 7	50
11698	Feb.	6, 1883, C. Davis, coroner's juror,	$ 2	50
	11699	Feb. 6, 1883, D. E. Thomas, coroner's juror,	$ 2	50
17	11700	Feb. 6, 1883, T. F. Finch, coroner's juror,	$ 2	50
	11701	Feb. 6, 1883, D. E. Thomas, coroner's juror,	$ 2	50
11705	Feb.	6, 1883, E. J. Morrisey, bailiff county court,	$130	00
11708	Feb.	6, 1883, E. E. Baker, dep. sheriff,	$124	65
11709	Feb.	6, 1883, J. W. Christy, stenographr dist. court,	$180	00
11715	Feb.	6, 1883, W. Ganus, witness dist. court,	$ 12	50
11722	Feb.	7, 1883, P. Byrnes, witness dist. court,	$ 7	50
11723	Feb.	7, 1883, Wm. Kellogg, dist. atty,	$340	00
11751	April	12, 1883, J. G. Whitehead, witness dist. court,	$ 18	60
11812	April	12, 1883, Daniel Foutz, petit juror,	$ 15	00
11841	April	12, 1883, Wm. Kellogg, dist. atty,	$350	00
11858	April	12, 1883, B. Becker, jailor,	$ 50	00
11860	April	12, 1883, do do	$ 50	00
11894	April	13, 1883, A. O. Spaulding, witness dist. court,	$ 2	50
12104	July	5, 1883, E. Nicholls, petit juror,	$ 50	40
12175	July	5, 1883, A. A. Miller, witness criminal court,	$ 10	40
12183	July	6, 1883, A. A. Baker, dep. sheriff,	$ 15	20
12187	July	6, 1883, F. Baker, bailiff dist. court,	$ 40	00
12195	July	6, 1883, H. Perine, dep. sheriff,	$ 12	55

12206	July 6, 1883, J. A. Miller, clerk of supreme court,	$ 39	75
12222	July 6, 1883, J. M. Corser, petit juror,	$ 30	00
12298	July 12, 1883, W. H. Harrison, justice's fees,	$300	00
12299	July 12, 1883, do do	$300	00
12338	Aug. 8, 1883, B. Moriarity, janitor court house,	$120	00
12339	do do do do do do	$ 45	00.
12404	Aug. 15, 1883, W. L. Ledford, witness criminal court,	$ 7	90
12414	Sept. 3, 1883, D. E. Parks, Co. Atty's salary,	$250	00
12468	Sept. 20, 1883, John Hayes, Co. treasurer's fees,	$1,000	00
12469	Sept. 20, 1883, do do do	$1,000	00
18 12471	Sept. 20, 1883, do do do	$799	52
12483	Sept. 20, 1883, E. J. Morrisy, deputy sheriff,	$ 6	30
12484	Sept. 20, 1883, P. McLister, deputy sheriff,	$ 4	20
12485	Sept. 20, 1883, P. McLister, bailiff dist. court,	$100	00
12486	Sept. 20, 1883, E. J. Morrissey, bailiff county court,	$ 90	00
12487	Sept. 20, 1883, Otto Mangold, dep. sheriff,	$ 17	25
12488	Sept. 20, 1883, Otto Mangold, bailiff criminal court,	$ 20	00
12489	Sept. 20, 1883, Asa Baldwin, coroner's juror,	$ 2	50
12490	Sept. 20, 1883, H. S. Kimball, juror criminal court,	$ 5	30
12491	Sept. 20, 1883, W. N. Bowdoin, juror criminal court,	$ 2	80
12492	Sept. 20, 1883, E. J. Enfar, juror criminal court,	$ 2	80
12493	Sept. 20, 1883, Frank O'Mara, juror criminal court,	$ 12	80
12498	Sept. 20, 1883, W. H. Eaker, juror criminal court,	$ 2	80
12499	Sept. 20, 1883, T. E. Kendrick, witness criminal court,	$ 7	90
12502	Sept. 23, 1883, W. H. Eaker, petit juror,	$ 2	50
12510	Sept. 21, 1883, Wm. Kellogg, dist. atty.,	$365	00
12511	Sept. 21, 1883, J. A. Milner, dep. assessor,	$ 98	00
12524	Sept. 27, 1883, Wm. Kellogg, dist. atty.,	$405	00
12533	Oct. 5, 1883, J. R. Harding, witness crimnal court,	$ 3	30
12534	Oct. 5, 1883, Theo. Fayne, witness criminal court,	$ 2	80
12535	Oct. 5, 1883, W. H. Bryant, juror criminal court,	$ 10	30
12536	Oct. 5, 1883, Theo. Fayne, juror criminal court,	$ 2	80
12538	Oct. 5, 1883, W. W. Breden, coroner's fees,	$ 33	85
12545	Oct. 5, 1883, Ed. Morrissy, deputy sheriff,	$ 11	90
12546	Oct. 5, 1883, C. Gurtler, cleaning criminal court,	$ 10	00
12573	Nov. 14, 1883, A. Meyer, juror criminal court,	$ 12	80
12578	Nov. 14, 1883, Anton Stamm, juror criminal court,	$ 5	30
12589	Nov. 15, 1883, H. S. Fawcett, constable,	$ 33	60
12597	Nov. 15, 1883, Wm. Kellogg, dist. atty.,	$260	00
12603	Nov. 15, 1883, E. J. Morrisy, dep. sheriff,	$ 95	00
12621	Nov. 15, 1883, J. W. Coyne, constable,	$135	30
19 12636	Nov. 15, 1883, John Ryan, clerk of election,	$ 12	50
12640	Nov. 15, 1883, F. S. Tart, judge of election,	$ 15	00
12641	Nov. 15, 1883, Charles Ferritt, judge of election,	$ 15	00
12645	Nov. 15, 1883, E. Jackson, judge of election,	$ 12	50
12652	Nov. 15, 1883, T. T. McCloskey, judge of election,	$ 39	50
12683	Nov. 16, 1883, J. W. Coyne, judge of election,	$ 25	00
12707	Dec. 3, 1883, W. R. Edwards, judge of election,	$ 25	00
12711	Dec. 3, 1883, C. H. Heseltine, clerk of election,	$ 5	00
12727	Dec. 4, 1883, Ernest Hoffman, juror criminal court,	$ 10	30
12764	Dec. 4, 1883, Thomas McClure, judge of election,	$ 25	00

12766	Dec. 4, 1883, W. H. Horrigan, judge of election,	$ 25	00
12772	Dec. 4, 1883, W. P. Belding, clerk of election,	$ 5	00
12774	Dec. 4, 1883, M. L. Brunner, judge of election,	$ 15	00
12799	Dec. 17, 1883, Ed. Murray, witness dist. court,	$ 22	50
12806	Dec. 17, 1883, W. H. Harrison, canvassing board,	$ 10	00
12811	Dec. 17, 1883, J. W. Jaque, clerk to commissioners,	$ 50	00
12815	Dec. 17, 1883, do do do	$ 50	00
12819	Dec. 17, 1883, do do do	$ 50	00
12820	Dec. 17, 1883, do do do	$ 50	00
12821	Dec. 17, 1883, do do do	$ 50	00
12822	Dec. 17, 1883, do do do	$ 50	00
12823	Dec. 17, 1883, do do do	$ 50	00
12824	Dec. 17, 1883, do do do	$ 50	00
12843	Jan. 7, 1884, J. H. Monheimer, Co. commissioner,	$ 30	00
12874	Jan. 7, 1884, F. H. Reim, juror criminal court,	$ 2	80
12908	Jan. 9, 1884, J. T. McCarty, juror criminal court,	$ 10	00
12913	Jan. 9, 1884, J. W. Jaque, co. clerk,	$ 50	00
12914	do do do	$ 50	00
12915	Jan. 9, 1884, do do	$ 50	00
12916	Jan. 9, 1884, J. W. Jaque, abstract of assessment,	$ 50	00
12917	Jan. 9, 1884, do do do	$ 50	00
12918	Jan. 9, 1884, do do do	$ 50	00
20 12919	Jan. 9, 1884, do do do	$ 50	00
12920	Jan. 9, 1884, do do do	$ 50	00
12921	Jan. 9, 1884, do do do	$ 50	00
12922	Jan. 10, 1884, J. H. Kerwin, clerk criminal court,	$591	35
12942	Feb. 7, 1884, D. Fancher, petit juror,	$ 20	00
12949	Feb. 7, 1884, T. J. Barnes, petit juror,	$ 2	50
13011	Feb. 12, 1881, H. S. Fawcett, witness criminal court,	$ 2	90
13020	Feb. 6, 1884, N. N. Robetson, petit juror,	$ 12	50
13042	Feb. 20, 1884, H. S. Fawsett, court fees,	$ 19	20
13068	March 5, 1884, R. H. Flover, witness criminal court,	$ 5	00
13070	March 5, 1884, do do do	$ 2	50
13134	March 8, 1884, F. DeMainville, county commissioner,	$ 80	00
13146	March 17, 1884, S. L. Van Ameringen, juror criminal court,	$ 22	50
13159	March 24, 1884, W. A. Ellis, juror dis. court,	$ 12	50
13204	April 12, 1884, Jacob Sands, juror dis. court,	$ 12	50
13206	April 12, 1884, P. M. Martin, juror dist. court,	$ 57	50
13207	Apr. 12, 1884, R. W. Miller, juror criminal court,	$ 28	00
13208	Apr. 12, 1884, C. H. Lawrence, juror criminal court,	$ 20	00
13209	Apr. 12, 1884, W. M. Bowdoin, juror criminal court,	$ 20	00
13210	Apr. 12, 1884, J. Forestall, juror criminal court,	$ 20	00
13211	Apr. 12, 1884, J. A. Shinn, juror criminal court,	$ 20	00
13212	Apr. 12, 1884, J. Brennan, juror criminal court,	$ 20	00
13213	Apr. 12, 1884, W. B. Watson, juror criminal court,	$ 20	00
13214	Apr. 12, 1884, J. H. Silverberg, juror dist. court,	$ 5	00
13215	Apr. 12, 1884, F. W. Baker, juror dist. court,	$ 7	50
13216	Apr. 12, 1884, G. A. Jackson, juror dist. court,	$ 57	50
13217	Apr. 12, 1884, Cyrus Reill, juror dist. court,	$ 2	50

13218	Apr. 12, 1884,	J. Forestall, juror criminal court,	$ 7 50
13219	Apr. 12, 1884,	T. W. Brown, juror dist. court,	$ 21 00
13220	Apr. 12, 1884,	W. N. Steele, juror criminal court,	$ 20 00
21 13221	Apr. 12, 1884,	Jesse Hanley, juror, criminal court,	$ 20 00
13222	Apr. 12, 1884,	J. Greenlaw, juror, criminal court,	$ 20 00
13223	Apr. 12, 1884,	F. W. Becker, juror, criminal court,	$ 20 00
13227	Apr. 16, 1884,	W. J. Malkim, juror, dist. court,	$ 2 50
13235	Apr. 16, 1884,	C. H. Perkins, deputy sheriff,	$ 28 85
13264	May 5, 1884,	J. H. Hood, deputy assessor,	$182 00
13265	May 5, 1884,	John Alfred, deputy assessor,	$182 00
13270	May 5, "	John Linstrom, witness, criminal court,	$ 10 00
13271	May 5, 1884,	F. B. Bickford, juror, dist. court,	$ 5 00
13273	May 5, 1884,	Charles Fielding, coroner,	$ 9 70
13298	May 6, 1884,	W. J. Bayard, juror, dist. court,	$ 5 00
13315	May 7, 1884,	W. W. Officer, juror, dist. court,	$ 2 50
13317	May 7, 1884,	John Noland, grand juror,	$ 60 00
13335	May 7, 1884,	Harry Williams, witness, dist. court,	$ 11 10
13347	June 4, 1884,	R. H. Buck, witness, dist. court,	$ 7 50
13348	June 4, 1884,	do do	$ 7 50
13349	June 4, 1884,	do do	$ 7 50
13350	June 4, 1884,	do do	$ 7 50
13351	June 4, 1884,	do do	$ 5 00
13352	June 4, 1884,	R. H. Buck, attorney before criminal court,	$ 60 00
13353	June 4, 1884,	R. H. Buck, witness, criminal court,	$ 5 00
13359	June 4, 1884,	C. H. Perkins, bailiff, dist. court,	$ 65 00
13368	June 4, 1884,	F. O'Mara, juror, dist. court,	$ 2 50
13371	June 4, 1884,	W. W. Officer, juror, dist. court,	$ 7 50
13376	June 4, 1884,	Sam M. Ford, juror, county court,	$ 2 50
13379	June 4, 1884,	Peter Jennings, juror, county court,	$ 12 50
13380	June 4, 1884,	P. W. Burchinell, juror, crim. court,	$ 2 50
13381	June 4, 1884,	do do	$ 5 00
13383	June 4, 1884,	John Gorham, juror, criminal court,	$ 5 00
22 13385	June 4, 1884,	Jas. B. Corneille, juror, dist. court,	$ 17 50
13387	June 4, 1884,	B. Becker, bailiff, county court,	$ 60 00
13390	June 4, 1884,	H. W. Canney, grand juror,	$ 75 00
13450	June 4, 1884,	H. C. Anderson, grand juror,	$ 77 50
13457	June 4, 1884,	W. J. Bayard, juror, dist. court,	$ 15 00
13563	June 29, 1884,	H. S. Fawcett, witness criminal court,	$ 10 00
13640	Oct. 4, 1884,	Alec Da Lappe, Co. commissioner,	$ 85 00
13690	Dec. 30, 1884,	Peter Becker, sheriff,	$ 57 30
13693	Dec. 30, 1884,	W. W. Carter, juror, dist. court,	$ 5 00
13705	Dec. 30, 1884,	Anton Stann, juror, dist. court,	$ 2 50
13714	Dec. 30, 1884,	R. J. Allison, juror, dist. court,	$ 30 00
13721	Dec. 30, 1884,	Peter Becker, sheriff's fees,	$ 17 50
13722	Dec. 30, 1884,	do do	$ 79 75

13723	Dec. 30, 1884,	do do	$ 61 75
13724	Dec. 30, 1884,	Peter Becker, sheriff's fees,	$ 79 75
13742	Jan. 13, 1885,	George E. King, juror, crim. court,	$ 17 50
13752	Jan. 13, 1885,	P. M. Martin, juror, dist. court,	$ 5 00
13754	Jan. 13, 1885,	John P. Bunn, juror, dist. court,	$ 20 00
13757	Jan. 13, 1885,	B. Becker, bailiff, county court,	$ 60 00
13759	Jan. 13, 1885,	Peter Becker, sheriff's fees,	$ 70 83
13760	Jan. 13, 1885,	do do	$ 61 75
13766	Jan. 13, 1885,	Thomas B. Powers, judge of election	$ 17 50
13775	Feb. 4, 1885,	Al. Lynch, election,	$ 17 50
13792	Feb. 4, 1885,	W. H. Francis, election,	$ 15 00
13875	March 7, 1885,	Pat Healey, judge of election,	$ 25 00
13886	March 11, 1885,	S. L. Chapin, juror, dist. court,	$ 7 50
13891	March 13, 1885,	D. H. Rutledge, juror, criminal court,	$ 22 50
13896	March 26, 1885,	T. W. Burchinell, juror, dist. court,	$ 2 50
13920	April 27, 1885,	W. W. Officer, juror, dist. court,	$ 2 50
13927	April 27, 1885,	Peter Becker, sheriff's fees,	$ 56 50
23 13928	April 27, 1885,	do do	$123 70
13929	April 27, 1885,	Frank McLister, bailiff, dist. court,	$ 65 00
13930	April 27, 1885,	Frank McLister, deputy sheriff,	$ 31 90
13934	April 30, 1885,	J. W. Corser, juror, dist. court,	$ 17 50
13941	April 30, 1885,	W. W. Officer, juror, dist. court,	$ 2 50
13942	April 30, 1885,	J. E. Miller, witness, dist. court,	$ 7 50
13948	April 30, 1885,	W. W. Officer, judge of election,	$ 17 50
13949	April 30, 1885,	A. J. Gilber, judge of election,	$ 17 50
13953	April 30, 1885,	C. C. Joy, witnes, dist. court,	$ 12 20
13954	April 30, 1885,	Peter Becker, sheriff's fees,	$ 61 25
13957	April 30, 1885,	do do	$ 40 20
13963	April 30, 1885,	C. C. Kellogg, Co. commissioner,	$ 85 00
13967	May 12, 1885,	M. O. Sherman, juror, dist. court,	$ 5 00
13972	May 12, 1885,	Thos. L. Darby, juror, dist. court,	$ 7 50
13974	May 12, 1885,	P. Becker, sheriff's fees,	$ 12 10
13976	May 12, 1885,	do do	$ 96 75
13978	May 12, 1885,	Frank McLister, deputy sheriff fees,	$ 6 60
13979	May 12, 1885,	McLister, bailiff, dist. court,	$ 27 50
13982	May 12, 1885,	B. Becker, bailiff, county court,	$ 72 50

24 That these several warrants, last mentioned, were all signed by the Chairman of the Board of County Commissioners of said county, acting at the time of their allowance and issue, and attested by the clerk of the county at the said date, and were countersigned by the treasurer of said county at said date.

That by the provisions of the law, as it then and now existed, the holders of said warrants, upon the presentation of the same to the County Treasurer for payment, there being no funds in the treasury applicable to the payment thereof, was entitled to have endorsed by the said treasurer an endorsement in general form as follows, to wit:

Presented————————

No funds. This warrant draws interest from this date at the rate of 10 per cent. per annum.

County Treasurer.

That each and all of said warrants above mentioned and set forth were duly, at the times endorsed on each of said warrants, presented to the treasurer of the said county for payment and payment refused, and the said endorsement in form as above stated was made by the said treasurer, the blanks being filled in with the date of presentation, and the said warrants were thereupon, in accordance with law, then and there registered by the said county treasurer in a book kept by him for that purpose.

That the said several warrants were presented at the times stated thereon and as follows, to wit:

Said warrant, numbered as set forth in Exhibit "A," which is hereto attached and made a part of this complaint, which warrant was signed and attested by the chairman and county clerk of said county, in said exhibit named, was presented to H. A. W. Tabor, treasurer of said county, on the date in said exhibit mentioned, and was by him on that date duly registered; which warrant has, since that time, drawn interest at the rate of ten per cent. per annum.

All of said warrants, numbered as set forth in, and signed and attested by the chairman and county clerk named, in Exhibit "B," which is hereto attached and made a part of this complaint, were, at the various dates in said Exhibit "B" mentioned, duly presented for payment to R. H. Stanley, county treasurer of said county, and by him endorsed in form as above set forth, and duly registered; since which time said warrants have drawn interest at the rate of ten per cent. per annum.

All of said warrants, numbered as set forth in, and signed and attested by the chairman and county clerk named, in Exhibit "C," which is hereto attached and made a part of this complaint, were, at the various dates in said Exhibit "C" mentioned, duly presented for payment to John Hayes, county treasurer of said county, and by him endorsed in form as above set forth, and duly registered; since which time said warrants have drawn interest at the rate of ten per cent. per annum.

All of said warrants, numbered as set forth in, and signed by the chairman and attested by the county clerk named in Exhibit "D," which is hereto attached and made a part of this complaint, were, at the various dates in said Exhibit "D" mentioned, duly presented for payment to John Hayes, county treasurer of said county, and by him endorsed in form as above set forth, and duly registered; since which several dates said warrants have drawn interest at the rate of ten per cent. per annum.

All of said warrants, numbered as set forth, and signed by the chairman and attested by the county clerk named, in Exhibit "E," which is hereto attached and made a part of this complaint, were, at the various dates in said Exhibit "E" mentioned, duly presented

for payment to John Hayes, county treasurer of said county, and by him endorsed in form as above set forth, and duly regis-
26 tered; since which several dates said warrants have drawn interest at the rate of ten per cent. per annum.

All of said warrants, numbered as set forth in, and signed by the chairman and attested by the county clerk named in, Exhibit "F," which is hereto attached and made a part of this complaint, were, at the various dates in said Exhibit "F" mentioned, duly presented for payment to John Hayes, county treasurer of said county, and by him endorsed in form as above set forth, and duly registered; since which said several dates said warrants have drawn interest at the rate of ten per cent. per annum.

Said warrants, numbered as set forth in, and signed by the chairman and attested by the county clerk named in, Exhibit "G," which is hereto attached and made a part of this complaint, was, at the date in said Exhibit "G" mentioned, duly presented for payment to E. E. Raub, county treasurer of said county, and by him endorsed in form as above set forth, and duly registered; since which time said warrant has drawn interest at the rate of ten per cent. per annum.

Said warrant, numbered as set forth and signed by the chairman and attested by the county clerk named, in Exhibit "H," which is hereto attached and made a part of this complaint, was, at the date in said Exhibit "H" mentioned, duly presented for payment to E. E. Raub, county treasurer of said county, and by him endorsed in form as above set forth, and duly registered; since which date said warrant has drawn interest at the rate of ten per cent. per annum.

All of said warrants, numbered as set forth, and signed by the chairman and attested by the county clerk named in Exhibit "I," which is hereto attached and made a part of this complaint, were, at the various dates in said Exhibit "I" mentioned, duly presented for payment to E. E. Raub, county treasurer of said county, and by him endorsed in form as above set forth, and duly regis-
27 tered; since which several dates said warrants have drawn interest at the rate of ten per cent. per annum.

Said warrant, numbered as set forth and signed by the chairman and attested by the county clerk, named in Exhibit "K," which is hereto attached and made a part of this complpint, was, at the date set forth in said Exhibit "K," duly presented for payment to R. H. Stanley, county treasurer of said county, and by him endorsed in form as above set forth and duly registered. Since which date said warrant has drawn interest at the rate of ten per cent. per annum.

All of said warrants, numbered as set forth and signed by the chairman and attested by the county clerk, named in Exhibit "L," which is hereto attached and made a part of this complaint, were, at the various dates in said Exhibit "L" mentioned, duly presented for payment to David May, county treasurer of said county, and by him endorsed in form as above set forth and duly registered. Since which several dates said warrants have drawn interest at the rate of ten per cent. per annum.

All of said warrants, numbered as set forth and signed by the chairman and attested by the county clerk, named in Exhibit "M," which is hereto attached and made a part of this complaint, were, at the various dates in said Exhibit "M" mentioned, duly presented for payment to David May, treasurer of said county, and by him endorsed in form as above set forth and duly registered. Since which several dates said warrants have drawn interest at the rate of ten per cent. per annum.

All of said warrants, numbered as set forth and signed by the chairman and attested by the county clerk, named in Exhibit "N," which is hereto attached and made a part of this complaint, were, at the various dates in said Exhibit "N" mentioned, duly presented for payment to David May, county treasurer of said county, and by him endorsed in form as above set forth and duly registered. Since which several dates said warrants have drawn interest
28 at the rate of ten per cent. per annum.

All of said warrants numbered and set forth and signed by the chairman and attested by the county clerk, named in Exhibit "O," which is hereto attached and made a part of this complaint, were, at the various dates in said Exhibit "O" mentioned, duly presented for payment to David May, county treasurer of said county, and by him duly endorsed in form as above set forth and duly registered. Since which several dates said warrants have drawn interest at the rate of ten per cent. per annum.

All of said warrants, numbered as set forth and signed by the chairman and attested by the county clerk, named in Exhibit "P," which is hereto attached and made a part of this complaint, were, at the various dates in said Exhibit "P" mentioned, duly presented for payment to David May, county treasurer of said county, and by him endorsed in form as above set forth and duly registered. Since which several dates said warrants have drawn interest at the rate of ten per cent. per annum.

All of said warrants, numbered as set forth and signed by the chairman and attested by the county clerk, named in Exhibit "R," which is hereto attached and made a part of this complaint, were, at the various dates in said Exhibit "R" mentioned, duly presented to David May, county treasurer of said county, and by him endorsed in form as above set forth and duly registered. Since which several dates said warrants have drawn interest at the rate of ten per cent. per annum.

Said warrant, numbered as set forth and signed by the chairman and attested by the county clerk, named in Exhibit "S," which is hereto attached and made a part of this complaint, was, at the date set forth in said Exhibit "S," duly presented to E. E. Raub, county treasurer of said county, and by him endorsed in form as above set forth and duly registered. Since which date said warrant has drawn interest at the rate of ten per cent. per annum. That the assessed valuation of said county did not reach one million
29 dollars with the assessment of 1879, and that all of said warrants are due and unpaid, together with the interest thereon since the several dates of their registration.

That subsequent to said registration this plaintiff bought and purchased said warrants for a valuable consideration, and is now the owner and holder thereof.

This plaintiff further shows that there is now due on said several warrants specified and set forth herein and in the exhibits hereto attached the sum of twenty-six thousand nine hundred and seventy-four dollars and fifty-three cents ($26,974.53) principal, and ten thousand seven hundred and ninety-nine dollars and fourteen cents ($10,799.14) interest to the first day of February, 1887.

And this plaintiff prays that judgment may be entered in his favor and against the Board of County Commissioners of the County of Lake for the sum of thirty-seven thousand seven hundred and seventy-three dollars and sixty-seven cents ($37,773.67) together with interest on the sum of twenty-six thousand nine hundred and seventy-four dollars and fifty-three cents ($26,974.53), at the rate of ten per cent. per annum from the first day of February, 1887, till the time of the rendition of judgment herein; and for the costs of this action.

TELLER & ORAHOOD,
Attorneys for Plaintiff.

30 STATE OF COLORADO, } ss.
Arapahoe County, }

Willard Teller, being first duly sworn, on his oath deposes and says, that he is one of the attorneys for the plaintiff in the above entitled action; that said plaintiff is absent from the county of Arapahoe and from the State of Colorado, and is a non-resident of said State; and is therefore unable to make this verification, and therefore affiant makes it on his behalf; that affiant has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters and things which are therein stated on information and belief, and as to those matters and things he believes it to be true.

WILLARD TELLER.

Subscribed and sworn to before me this 1st day of February, 1887.

ALFRED L. HODDER,
[SEAL.] *Notary Public.*

EXHIBIT A. LAKE COUNTY WARRANTS. 31

No.	*Amount*	*Total.*	*Date of Registration*	*Accrued Interest.*	*Amt. Paid.*
394	2 90	2 90	July 18, 1879	2 18	5 08

Signed by Jos. Pearce, Chairman, Joseph H. Wells, County Clerk. Registered by H. A. W. Tabor, County Treasurer.

EXHIBIT B. LAKE COUNTY WARRANTS.

No.	*Amount*	*Total.*	*Date of Registration.*	*Accrued Interest.*	*Amt. Paid.*
1941	2 50				
1942	2 50	5	March 3, '80	3 46	
2557	8 80				
2658	8	16 80	May 6, '80	11 32	
2638	12	12	May 8, '80	8 05	
5538	945 60				Signed by Jos. Pearce, Chairman, Jos. H. Wells, Co. Clerk, and Registered by R. H. Stanley, Co. Tr.
5509	64				
5511	168 50				
5530	158 36				
5533	164 20				
5540	154 65	1655 31	Feb'y 10, '81	989 51	
5663	88				
5732	109				
5742	52 15	249 15	Feb'y 12, '81	148 80	
6375	46 50	46 50	May 5, '81	26 70	
6992	10	10	June 14, 81	5 63	
6843	2				
6871	7 50				
7033	2 50				32
7049	2 50				
7052	2 50	17	June 27, '81	9 52	
7076	14 45	14 45	July 16, '81	8 01	
7467	35	35	Aug't 4, '81	8 23	
7810	140	140	Oct'r 10, '81	74 35	
7876	5	5	Oct'r 14, '81	2 65	
7925	37 50	37 50	Oct'r 15, '81	19 86	
7958	15				
7940	30 90				
7960	15	60 90	Oct'r 26, '81	32 07	
7975	5				
8001	15	20	Nov'r 3, '81	10 49	
8126	2 50				
8125	22 50				
8124	72 50				
8112	38 85				
8106	10				
8096	25				
8095	5				
7766	12 70				
7927	46 40				
8092	7 50		Nov'r 3, '81		
	242 95	2324 61	*Forward,*	1369 65	

That subsequent to said registration this plaintiff bought and purchased said warrants for a valuable consideration, and is now the owner and holder thereof.

This plaintiff further shows that there is now due on said several warrants specified and set forth herein and in the exhibits hereto attached the sum of twenty-six thousand nine hundred and seventy-four dollars and fifty-three cents ($26,974.53) principal, and ten thousand seven hundred and ninety-nine dollars and fourteen cents ($10,799.14) interest to the first day of February, 1887.

And this plaintiff prays that judgment may be entered in his favor and against the Board of County Commissioners of the County of Lake for the sum of thirty-seven thousand seven hundred and seventy-three dollars and sixty-seven cents ($37,773.67) together with interest on the sum of twenty-six thousand nine hundred and seventy-four dollars and fifty-three cents ($26,974.53), at the rate of ten per cent. per annum from the first day of February, 1887, till the time of the rendition of judgment herein; and for the costs of this action.

TELLER & ORAHOOD,
Attorneys for Plaintiff.

30 STATE OF COLORADO, } ss.
Arapahoe County, }

Willard Teller, being first duly sworn, on his oath deposes and says, that he is one of the attorneys for the plaintiff in the above entitled action; that said plaintiff is absent from the county of Arapahoe and from the State of Colorado, and is a non-resident of said State; and is therefore unable to make this verification, and therefore affiant makes it on his behalf; that affiant has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters and things which are therein stated on information and belief, and as to those matters and things he believes it to be true.

WILLARD TELLER.

Subscribed and sworn to before me this 1st day of February, 1887.

ALFRED L. HODDER,
[SEAL.] *Notary Public.*

EXHIBIT A. LAKE COUNTY WARRANTS. 31

No.	*Amount*	*Total.*	*Date of Registration*	*Accrued Interest.*	*Amt. Paid.*
394	2 90	2 90	July 18, 1879	2 18	5 08

Signed by Jos. Pearce, Chairman, Joseph H. Wells, County Clerk. Registered by H. A. W. Tabor, County Treasurer.

EXHIBIT B. LAKE COUNTY WARRANTS.

No.	*Amount*	*Total.*	*Date of Registration.*	*Accrued Interest.*	*Amt. Paid.*	
1941	2 50					
1942	2 50	5	March 3, '80	3 46		
2557	8 80					
2658	8	16 80	May 6, '80	11 32		
2638	12	12	May 8, '80	8 05		
5538	945 60					
5509	64					
5511	168 50					Signed by Jos. Pearce, Chairman, Jos. H. Wells, Co. Clerk, and Registered by R. H. Stanley, Co. Tr.
5530	158 36					
5533	164 20					
5540	154 65	1655 31	Feb'y 10, '81	989 51		
5663	88					
5732	109					
5742	52 15	249 15	Feb'y 12, '81	148 80		
6375	46 50	46 50	May 5, '81	26 70		
6992	10	10	June 14, 81	5 63		
6843	2					
6871	7 50					
7033	2 50					32
7049	2 50					
7052	2 50	17	June 27, '81	9 52		
7076	14 45	14 45	July 16, '81	8 01		
7467	35	35	Aug't 4, '81	8 23		
7810	140	140	Oct'r 10, '81	74 35		
7876	5	5	Oct'r 14, '81	2 65		
7925	37 50	37 50	Oct'r 15, '81	19 86		
7958	15					
7940	30 90					
7960	15	60 90	Oct'r 26, '81	32 07		
7975	5					
8001	15	20	Nov'r 3, '81	10 49		
8126	2 50					
8125	22 50					
8124	72 50					
8112	38 85					
8106	10					
8096	25					
8095	5					
7766	12 70					
7927	46 40					
8092	7 50		Nov'r 3, '81			
	242 95	2324 61	*Forward,*	1369 65		

No.	Amount	Total.	Date of Registration.	Accrued Interest.	Amt. Paid.
	242 95	2324 61	*Forward,*	1369 65	
8093	15 40				
8094	2 50				
8117	35				
8064	159	454 85	Nov'r 17, '81	236 90	
8384	60 15				
8360	100				
8350	25	185 15	Dec'r 5, '81	95 51	
7691	117 15	117 15	Sept. 10, '81	63 17	
7725	109 70	109 70	Sept. 12, '81	59 10	
7701	2 50				
7700	2 50				
7721	144 51	149 51	Sept. 19, '81	80 25	
7751	240				
7740	21				
7738	184				
7737	10				
7759	180	635	Oct'r 6, '81	337 94	
7790	249 50	249 50	Oct'r 7, '81	132 70	
7812	100				
7813	68				
7841	10				
7807	10 50				
7837	5				
7842	5	198 50	Oct'r 8, '81	105 53	
7884	2 50				
7885	2 50				
7871	2 50				
7899	2 50				
7886	2 50				
7891	10				
7892	10 40				
7894	2 50				
7893	2 50				
7888	1065 96	1105 86	Oct'r 13, 81	586 27	
8406	49 25				
8453	66 10	115 35	Jan'y 6, '82	58 50	
2510	27 50	27 50	Nov'r 15, '80	17 05	
7580	7		Aug. 22, '81	3 80	
		5679 68		3146 37	8826 05

Signed by Jos. Pearce, Chairman, Jos. H. Wells, Co. Clerk, and Registered by R. H. Stanley, Co. Treas.

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EXHIBIT C. LAKE COUNTY WARRANTS.

No.	Amount	Total.	Date of Registration.	Accrued Interest.	Amt. Paid.
8027	2 50	2 50	June 6, '82	116	
6998	2 50	2 50	Nov'r 13, '82	106	
304	5	5	July 17, '83	177	
6983	2 20				
8511	24	26 20	Jan'y 11, '82	13 25	
8457	7 50	7 50	Jan'y 14, '82	3 78	
6064	148 30				
841	2 20	150 40	Ap'l 13, '82	72 20	
7829	2 50	2 50	Dec. 1, '83	79	
		196 60		94 01	290 61

Signed by Jos. Pearce, Chairman, Jos. H. Wells, Co. Clerk, and Registered by John Hays, Co. Tr.

EXHIBIT D. LAKE COUNTY WARRANTS. 33

No.	*Amount*	*Totat.*	*Date of Registration.*	*Accrued Interest.*	*Amt. Paid.*	
8887	7 50	7 50	Feb'y 16, '82	3 72		
9001	42 50	42 50	Apr. 8, '82	20 47		
9370	210	210	June 6, '82	97 77		
9862	32 50	32 50	June 10, '82	15 09		
9944	6 40	6 40	July 7, '82	2 92		
10146	2 50	2 50	Aug. 14, '82	1 12		
10697	2 50	2 50	Oct'r 10, '82	1 08		
10631	10					
10632	10					
10624	2 50	22 50	Oct'r 11, '82	9 69		
10850	30	30 00	Nov. 11, '82	12 68		
10616	23 60	23 60	Nov'r 2, '82	10 53		
10883	5					
10869	5					
10864	32 50					Signed by Nelson Hallack, Chairman, J. W. Jacque, Co. Clerk, and Registered by John Hayes, Co. Treas.
10896	2 50					
10898	2 50					
10897	2 50					
10899	2 50					
10900	2 50					
10902	2 50					
10901	2 50	60	Nov. 15, '82	25 28		34
8875	2 50	2 50	Dec. 1, '82	1 04		
10855	5	5	Dec. 4, '82	2 08		
11490	2 50					
11376	2 50					
11377	2 50	7 50	Feb'y 6, '83	2 99		
11627	21 45	21 45	Feb'y 17, '83	8 49		
12206	39 75	39 75	July 14, 83	14 11		
12493	12 80	12 80	Sept. 29, '83	4 28		
9847	10					
9849	7 50	17 50	Feb'y 15, '82	8 68		
10118	260	260	July 8, '82	118 87		
10993	19 65	19 65	Nov. 24, '82	8 22		
11141	12 50					
11194	15	27 50	Dec'r 10, '82	11 41		
11175	125	125	Dec'r 11, '82	51 75		
11172	20 00	20	Dec'r 12, '82	8 25		
11165	35	35	Jan'y 5, '83	14 25		
11291	7 50	7 50	Jan'y 17, '83	3 03		
	1041 15		*Forward,*	457 30		

No.	*Amount*	*Total.*	*Date of Registration.*	*Accrued Interest.*	*Amt. Paid.*	
	1041 15		*Forward,*	457 30		
11567	16 50					
11562	12					Signed by Nelson Hallack, Chairman, J. W. Jacque, Co. Clerk, and Registered by John Hayes, Co. Treas.
11359	2 50	31	Jan'y 27, '83	12 44		
11530	100					
11340	2 50	102 50	Jan'y 29, '83	41 08		
11483	2 50					
11564	2 50	5	Jan'y 30, '83	2		
11539	35					
11542	2 50	37 50	Feb'y 1, '83	15		
11452	2 50					
11454	2 50					
11456	2 50					
11453	2 50					
11455	2 50					
11457	2 50					
11458	2 50					
11461	2 50					
11464	2 50					
11467	2 50					
11466	2 50	27 50	Feb'y 2, '83	10 99		
11426	2 50					
11296	2 50					
11351	2 50					
11373	2 50					
11298	2 50					
11487	2 50					
11374	2 50					
11499	30	93 50	Feb'y 6, '83	37 27		
11536	37 50					
11385	3 30					
11488	2 70					35
11382	2 90					
11389	2 50					
11390	2 50					
11491	2 50					
11388	2 50					
11369	2 50					
11383	2 50					
11393	5					
11400	5		Feb'y 6, '83			
	71 40	1338 15	*Forward,*	576 08		

No.	*Amount*	*Total.*	*Date of Registration.*	*Accrued Interest*	*Amt. Paid.*
11394	5				
11512	5				
11384	5				
11404	37 50				
11411	37 50				
11417	37 50				
11396	5 80				
11397	5 80				
11540	39 50				
11392	17 50				
11395	5 80				
11516	60				
11518	60				
11350	7 50				
11367	12 50				
11402	7 50				
11520	37 50				
11495	12 50				
11382	2 50				
11486	7 50				
11546	5				
11513	7 50				
11379	3 10				
11398	5 80				
11380	3 10				
11344	5 40				
11322	5 40				
11319	5 40				
11509	5 60				
11403	37 50				
11370	2 50				
11372	2 50				
11399	2 50				
11391	2 50				
11547	2 50	577 10	Feb'y 6, 1883	230 05	
11629	180				
11723	340				
11722	7 50				
11715	12 50				
11709	180				
	720 00	1915 25	*Forward,*	806 13	

Signed by Nelson Hallack, Chairman, J. W. Jacque, Co. Clerk, and Registered by John Hayes, Co. Treas.

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No.	Amount	Total.	Date of Registration.	Accrued Interest.	Am't Paid.	
	720 00	1915 25	*Forward,*	806 13		
11705	130					
11701	2 50					
11700	2 50					
11699	2 50					
11698	2 50					Signed by Nelson Hallock, Chairman, J. W. Jacques, Co. Clerk, and registered by John Hayes, Co. Treas'r.
11697	7 50					
11690	12 50					
11696	15					
11689	2 50					
11668	47 50					
11682	10					
11685	7 50					
11660	17 50					
11665	32 50					
11667	20					
11659	17 50					
11658	5					
11657	12 50					
11626	15					
11631	15					
11633	2 50					
11643	77 50					
11656	12 50					
11624	5					
11625	5					
11622	5					
11623	5					
11618	15					
11621	5					
11614	15					
11568	22 30					
11572	37 50					
11589	11 80					
11606	120 70					
11619	5					
11620	5					
11613	47 50	1494 80	Feb'y 7, '83	595 42		
11666	35					
11688	2 50	37 50	Feb'y 17, '83	14 84		
11577	6 85		May 10, '83	2 52		
		3454 40	*Forward,*	1418 91		

No.	Amount	Total.	Date of Registration.	Accrued Interest.	Total.	
		3454 40	*Forward,*	1418 91		
10707	55	55	Oct'r 10, '82	23 70		Signed by Nelson Halloch, Chairman, J. W. Jacques, Co. Clerk, and registered by John Hayes, Co Treas.
10704	52 55	52 55	Oct'r 11, '82	22 63		
10891	45					
10889	47 50					
10888	45					
10886	5					
10981	43 75					
10979	45					
10966	180					
10963	5					
10962	5 60					
10955	52 60					
10937	40					
10929	40					
10914	5					
10914	5					
10927	180					
10980	202					

37

10978	395	1341 45	Nov. 15, '82	565 23	
10969	226 35	226 35	Nov. 17, :82	95 23	
10861	8 10				
10991	300				
10894	30	338 10	Nov. 18, '82	142 17	
11125	48				
11106	70				
11091	180				
11154	30				
11147	50				
11114	25	403	Dec. 9, '82	167 13	
11202	25				
11210	30				
11220	40				
11227	25				
11134	20	140	Dec. 11, '82	57 95	
11199	55				
11133	50				
11221	340				
11206	125				
11198	30				
11196	25		Dec. 11, '82		
	625	6010 85	*Forward,*	2492 95	

No.	*Amount*	*Total.*	*Date of Registration.*	*Accrued Interest.*	*Total*	
	625	6010 85	*Forward,*	2492 95		
11139	50					
11261	37 50					
11257	243					
11256	25					
11255	330	1310 50	Dec. 11, '82	542 76		Signed by Nelson Hallock, Chairman, J. W. Jacque, Co. Clerk, and registered by John Hayes, Co. Tr.
11105	18 10	18 10	Dec 27, '82	7 41		
11415	55 40	55 40	Jan'y 27, '83	22 23		
11318	10	10	Jan'y 29, '83	4		
11708	124 65	124 65	Feb'y 17, '83	49 30		
9212	25					
9251	57 95	82 95	Mch. 28, '82	40 15		
9352	86 75					
9357	200					
9289	50					
8874	2 50					
9006	20					
9287	45	404 25	Apl. 10, '82	194 43		
9286	35					38
9270	25					
9304	5					
9302	5					
8701	2 50					
8638	2 50					
8974	2 50					
8700	2 70	80 20	Apr. 28, '82	38 18		
9285	35	35 00				
12175	10 40	10 40	Sept. 18, '83	3 50		
12469	1000					
11468	1000					
12471	799 52	2799 52	Sept. 21, '83	941 70		
12486	90					
12483	6 30	96 30	Sept. 24, '83	32 31		
12488	20					
12487	17 25	37 25	Oct'r 2, '83	12 40		
12524	405					
12510	365	770	Oct'r 6, '83	255 81		
12187	40	40	Nov'r 12, '83	12 86		
12183	15 20	15 20	Dec'r 31, '83	4 68		
12195	12 55	12 55	Jan'y 4, '84	3 85		
		11913 12	*Forward,*	4658 52		

No.	*Amount*	*Total.*	*Date of Registration.*		
		11913 12	*Forward,*	4658 52	
11449	15 50	15 50	Jan'y 30, '88	6 20	
11684	7 50	7 50	Feb'y 12, '83	2 97	
12338	120				
12339	45	165	Aug. 7, '83	57 04	
12511	98				
12502	2 50				
12485	100				Signed by Nelson Hallock, Chairman, J. W. Jacque, Co. Clerk, and registered John Hayes, Co. Treas'r.
12484	4 20				
12498	2 80				
12492	2 80				
14491	2 80				
12490	5 30				
12489	2 50				
12404	7 90	228 80	Sept. 29, '83	76 44	
11681	2 50	2 50	Feb'y 10, '83	99	
11612	5 45				
10621	5	10 45	Feb'y 15, '83	4 14	
		12342 87		4806 30	17,149 17

EXHIBIT E. LAKE COUNTY WARRANTS. 39

No.	*Amount*	*Total.*	*Date of Ragistration.*	*Accrued Interest.*	*Amt. Paid.*	
10488	6 20					
10489	6 20					
10504	5	17 40	Sept. 9, '82	7 65		
10512	50					
10512	50					
10510	50					
10551	78 50					
10529	50					
10528	50					Signed by Henry Kelley, Chrmn *pro tem.*, J. W. Jacque, Co. Clerk, and Registered by John Hayes, Co. Treas.
10527	50					
10526	50					
10525	50					
10524	50					
10523	50					
10522	50					
10521	50					
10520	50					
10519	50					
10518	50					
10517	50					
10516	50					
10515	50					
10514	50					
10513	50	1078 50	Sept. 11, '82	473 64		
10401	68 55	68 55	Sept. 20, '82	29 93		
10828	601 65		Oct'r 10, '82	259 38		
10841	6 10					
10840	6 10					
10839	6 10	18 30	Oct'r 11, '82	7 88		
10818	55	55	Nov'r 28, '82	22 98		
11860	50					
11858	50	100	April 16, '82	37 94		
11812	15					
11751	18 60	33 60	May 14, '82	12 49		
12298	300					
12299	300	600	July 14, '82	213		
10729	31 10	31 10	Oct'r 10, '82	13 40		
10749	5 80	5 80	Oct'r 16, '82	2 48		
10774	7 50	7 50	Oct'r 12, '82	3 22		
11841	350	350	July 11, '83	124 54		
		2967 40	*Forward,*	1208 53		

			2967	40	*Forward*,	1208	53	
12414	250		250		Sept. 10, '83	84	84	
12546	10		10		Nov'r 2, '83	3	25	
12597	260		260		Nov'r 19, '83	83	26	
12545	11	70						
12573	12	80	24	50	Nov'r 20, '83	7	82	
12578	5	30	5	30	Dec'r 28, '83	1	64	
12536	2	80						
12535	10	30						
12534	2	80						
12533	3	30	19	20	Oct'r 6, '83	6	65	
12538	33	85	33	85	Nov'r 21, '83	10	53	
			3570	25		1406	52	4976 77

EXHIBIT F. LAKE COUNTY WARRANTS. 40

No.	*Amount*	*Total.*	*Date of Registration.*	*Accrued Interest.*	*Amt. Paid.*
12811	50				
12815	50				
12819	50				
12820	50				
12821	50				
12822	50				
12823	50				
12824	50	400	Dec'r 27, '83	123 89	
12683	25				
12645	12 50				
12621	135 30				
12603	95				
12589	33 60	301 40	Nov'r 20, '83	96 43	
12641	15				
12640	15	30	Dec. 1, '83	9 50	
12774	15				
13772	5	20	Dec. 11, '83	6 26	
12806	10	10	Dec. 24, '83	3 10	
12652	39 50	39 50	Dec'r 8, '83	12 42	
		800 90		251 60	1052 50

Signed by Henry Kelley, Chairman, J. W. Jacque, Co. Clerk, and Registered by John Hayes, Co. Treas.

EXHIBIT G. LAKE COUNTY WARRANTS.

No.	*Amount*	*Total.*	*Date of Registration.*	*Accrued Interest.*	*Amt. Paid.*
12843	30	30	Jan'y 17, '84	9 13	39 13

Signed by Henry Kelley, Chairman, J. W. Jacque, County Clerk, and Registered by E. E. Raub, County Treasurer.

EXHIBIT H. LAKE COUNTY WARRANTS.

11894	2 50	2 50	March 7, 1884	72	3 22

Signed by Henry Kelley, Chairman *pro tem.*, J. W. Jacque, County Clerk, and Registered by E. E. Raub, County Treasurer.

EXHIBIT I. LAKE COUNTY WARRANTS. 41

No.	Amount	Total.	Date of Registration.	Accrued Interest.	Amt. Paid.	
12922		591 35	Jan'y 29, '84	177 90		
13011		2 90	Feb'y 16, '84	86		
13020		12 50	Feb'y 18, '84	3 69		
13042		19 20	Feb'y 27, '84	5 63		
12913	50					Signed by F. De Mainville, Chairman, F. M. Reardon, Co. Clerk, and Registered by E. E. Raub, County Treas'r.
12921	50					
12920	50					
12919	50					
12918	50					
12917	50					
12916	50					
12915	50					
12914	50	450	Jan'y 25, '84	135 87		
		1075 95		323 95	1399 90	

EXHIBIT K. LAKE COUNTY WARRANTS.

12636	12 50	12 50	March 11, '84	3 60	16 10

Signed by Henry Kelley, Chairman, J. W. Jacque, Co. Clerk, and Registered by R. H. Stanley, County Treasurer.

EXHIBIT L. LAKE COUNTY WARRANTS.

12764	25				
12799	22 50	47 50	April 25, '84	13 15	
12874	2 80	2 80	May 16, 84	76	
12707	25				
12711	5				
12727	10 30	40 30	June 4, '84	10 72	
12766	25	25	Jan'y 28, '85	5 03	
	115 60	29 66		145 26	

Signed by Henry Kelley, Chairman, J. W. Jacque, County Clerk, and Registered by David May, County Treasurer.

EXHIBIT M. LAKE COUNTY WARRANTS.

8866	7 50	7 50	May 1, '84	2 07	
8951	2 50	2 50	May 2, '85	44	
12104	50 40	50 40	May 27, '84	13 51	
12499	7 90	7 90	June 4, '84	2 08	
		68 30		18 10	86 40

Signed by Nelson Hallock, Chairman, and J. W. Jacque, Co. Clerk, and Registered by David May, County Treasurer.

EXHIBIT N. LAKE COUNTY WARRANTS. 42

No.	Amount	Total.	Date of Registration.	Accrued Interest	Amt. Paid.
8458	5				
6950	2 50	7 50	May 2, '85	1 31	8 81

Signed by Jos. Pearce, Chairman and Joseph H. Wells, County Clerk, and Registered by David May, County Treasurer.

EXHIBIT O. LAKE COUNTY WARRANTS.

13069	5				
13070	2 50	7 50	May 8, '85	2 05	9 55

Signed by J. A. DeLappe, Chairman, and F. M. Reardon, Co. Clerk, and Registered by David May, County Treasurer.

EXHIBIT P. LAKE COUNTY WARRANTS.

13982	72 50	72 50	May 12, '85	12 49	
13967	5	5	June 27, '85	80	
		77 50		13 29	90 79

Signed by F. De Mainville, Chairman, H. M. Burrell, Acting County Clerk, and Registered by David May, County Treasurer.

EXHIBIT R. LAKE COUNTY WARRAETS.

13218	7 50				
13214	5				
13220	20				
13217	2 50				
13212	20				
13223	20				
13222	20				
13221	20				
13209	20				
13210	20				
13211	20				
13213	20				
13208	20				
13207	28				
13219	21				
13215	7 50				
43216	57 50	3 29	April 15, '84	92 03	
13235	28 85				
13206	57 50				
13204	12 50	98 85	Apil 17, '84	27 59	
13134	80	80	May 4, '84	21 96	
13264	182	182	May 6, '84	49 85	
13270	10				
13265	182				
13273	9 70				
13908	10	211 70	May 9, '84	57 80	

Signed by F. De Mainville, Chairman, F. M. Reardon, Co. Clerk, and Registered by David May, Co. Treas.

No.	*Amount*	*Total.*	*Date of Registration.*	*Accrued Interest.*	*Amt. Paid.*
12949	2 50				43
13298	5	7 50	May 16, '84	2 03	
13335	11 10	11 10	May 27, '84	2 97	
13315	2 50				
13271	5				
13359	65	72 50	June 4, '84	19 29	
13159	12 50				
13385	17 50				
13381	5				
13383	5				
13376	2 50				
13371	7 50				
13380	2 50				
13450	77 50				
13457	15		June 5, '84		
	145	992 65	*Forward,*	273 52	

	145		992 65	*Forward,*	273 52		
13390	75						
13387	60						
12942	20		300	June 5, '84	79 75		
13379	12	50					Signed by F. De Mainville, Chairman, F. M. Reardon, Co. Clerk, and Registered by David May, Co. Treas.
13368	2	50					
13317	60		75	June 6, '84	19 92		
13146	22	50	22 50	June 4, '84	5 99		
13563	10		10	Aug't 25, '84	2 44		
13722	79	75					
13690	37	30					
13721	17	50					
13723	61	75					
13724	79	75	296 05	Jan'y 5, '85	61 43		
13754	20		20	Jan'y 19, '85	4 07		
13757	60						
13752	5		65	Jan'y 20, '85	13 22		
13705	2	50					
13693	5						
13714	30						
13742	17	50					
13766	17	50					
13640	85						
13227	2	50	160	Jan'y 28, '85	32 18		
13760	61	75					
13759	70	83	132 58	Feb'y 3, '85	26 47		
13792	15						
13886	7	50					
13891	22	50					
13875	25						
13896	2	50					
13929	65						
13920	2	50					
13957	40	20					
13927	56	50					

No.	*Amount*		*Total.*	*Date of Registration.*	*Accrued Interest.*	*Amt. Paid.*	44
13934	17	50					
13948	17	50					
13949	17	50					
13941	2	50					
13963	85	00					
13954	61	25					
13928	122	70					
13930	31	90	592 55	May 2, '85	103 69		
			2666 33	*Forward,*	622 68		
			2666 33	*Forward,*	622 68		
13924	7	50	7 50	May 4, '85	1 31		
13974	12	10					
13976	96	75	108 85	May 20, '85	18 50		
13972	7	50					
13963	12	20	19 70	May 26. '85	3 32		Signed by F. De Maineville Ch'rm'n, F. M. Reardon, Co. Clerk, and registered by David May, Co. Treas.
13775	17	50	17 50	May 29, '85	2 93		
13979	27	50					
13978	6	60	34 10	June 1, '85	5 68		
13349	7	50					
13347	7	50					
13348	7	50					
13350	7	50					
13351	5						
13353	5						
13352	60		100	June 5, '84	26 75		
			2953 98		681 17	3635 15	

EXHIBIT S. LAKE COUNTY WARRANTS

12222 30 30 Jan'y 10, '84 9 18 39 18

Signed by Nelson Hallock, Chairman, J. W. Jacque, County Clerk, and Registered by E. E. Raub, County Treasurer.

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45 LAKE COUNTY WARRANTS—SUMMARY.

Exhibit.	*Signed and Registered by.*	*Face.*	*Interest.*	*Total.*
A.	Jos. Pearce, Chairman, Joseph H. Wells, Co. Clerk, and H. A. W. Tabor, Co. Treas.	2 90	2 18	5 08
B.	Jos. Pearce, Chairman, Jos. H. Wells, Co. Clerk, and R. H. Stanley, Co. Treas'r.	5679 68	3146 37	8826 05
C.	Jos. Peace, Chairman, Jos. H. Wells, Co. Clerk, and John Hayes, Co Treas'r.	196 60	94 01	290 61
D.	Nelson Hallock, Chairman, J. W. Jacque, Co. Clerk, and John Hayes, Co. Treas.	12342 87	4806 30	17149 17
E	Henry Kelley, Chairman *pro tem.*, J. W. Jacque, Co. Clerk, and John Hayes, Co. Treas.	3570 25	1406 52	4976 77
F.	Henry Kelley, Chairman, J. W. Jacque, Co. Clerk, and John Hayes, Co. Treas.	800 90	251 60	1052 50
G.	Henry Kelley, Chairman, J. W. Jacque, Co. Clerk, and E. E Raub, Co. Treas	30 00	9 13	39 13
H.	Henry Kelley, Chairman *pro tem.*, J. W. Jacque, Co. Clerk, and E. E. Raub, Co. Treas	2 50	72	3 22
I.	F. DeMaineville, Chairman, F. M. Reardon, Co. Clerk, and E E. Raub, Co. Treas	1075 95	323 95	1399 90
K.	Henry Kelley, Chairman, J. W. Jacque, Co. Clerk, and R. H. Stanley, Co. Treas.	12 50	3 60	16 10
L.	Henry Kelly, Chairman, J. W. Jacque, Co. Clerk, and David May, Co. Treas.	115 60	29 66	145 26
M.	Nelson Hallock, Chairman, J. W. Jacque, Co Clerk, and David May, Co. Treas.	68 30	18 10	86 40
N.	Jos Pearce, Chairman, Jos. H. Wells, Co. Clerk, and David May, Co. Treas.	7 50	1 31	8 81
46 Q.	J. A. DeLappe, Chairman, F M. Reardon, Co. Clerk, and David May, Co. Treas	7 50	2 05	9 55
P.	F DeMaineville, Chairman, H. M. Burrell, Acting Co Clerk, and David May, Co. Treas.	77 50	13 29	90 79
R.	F. DeMaineville, Chairman, F. M. Reardon, Co. Clerk, and David May, Co. Treas.	2953 98	681 17	3635 15
S.	Nelson Hallock, Chairman, J. W. Jacque, Co. Clerk, and E E. Raub, Co. Treas.	30 00	9 18	39 18
	Face,	26974 53		
	Interest,		10799 14	
	Total,			37773 67

Endorsement: No. 2102. U. S. C C. Frank W. Rollins vs The Board of County Commissiouers of the County of Lake. Complaint. Filed, Feb. 1, 1887. (S'g'd), Edward F. Bishop, Clerk. Teller & Orahood, Attorneys for Plaintiff.

47 And the said summons, with the return of the Marshal thereon, is in words and figures as follows, to wit:

Summons and Return.

In the Circuit Court of the United States, for the District of Colorado.

UNITED STATES OF AMERICA, *District of Colorado.* } ss.

FRANK W. ROLLINS, *Plaintiff,*
v.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE, *Defendant.*

Complaint filed in the Clerk's office, this first day of February, A. D. 1887.

The President of the United States of America, to The Board of County Commissioners of the County of Lake, greeting.

You are hereby notified that an action has been brought in said Court, by Frank W. Rollins, plaintiff, against you as defendant, to recover the sum of $37,773.67, due from you, the said defendant, to the said plaintiff on certain county warrants issued by defendant at divers times and to various persons, as more fully set forth and described in the complaint filed herein, and to which reference is here made, together with interest on $26,974.53, at ten per cent. per annum, from February 1, 1887, and for the costs of this suit.

You are hereby required to appear and demur or answer to the complaint filed in said action, in said Court, within ten days (exclusive of the day of service) after this summons shall be served
48 on you, if such service shall be made within the County of Arapahoe, otherwise within forty days from the date of service; and if you fail so to do, the said plaintiff will take judgment against you by default, according to the prayer of the said complaint, for said sum of $37,773.67, interest as aforesaid and costs.

Witness, the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the said Circuit Court, at the City of Denver, in said district, this first day of February, A. D. 1887, and of the independence of the United States, the 111th year.

(Signed) EDWARD F. BISHOP, *Clerk.*
[SEAL] By————————*Deputy Clerk.*

UNITED STATES OF AMERICA, *District of Colorado.* } ss.

FRANK W. ROLLINS,
v.
THE BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY.

Summons.

Proof of Service.

February 3, A. D. 1887.

I hereby certify that I received the within writ on the second day

of February, 1887, and that I have personally served the same upon the said defendant, The Board of County Commissioners of Lake County, Colorado, by delivering to Harvey M. Burrell, deputy clerk and recorder of Lake County, Colorado, and clerk to Board of County Commissioners, the clerk and recorder being out of the county, and each of them personally, a true copy of the within writ, at the time and place as follows:

49 As to Harvey M. Burrell, at Leadville, County of Lake, on the second day of February, A. D. 1887.

(Signed) ZEPH T. HILL, *Marshal.*
By T. W. BURCHINELL, *Deputy Marshal.*

Endorsed: Gen. No. 2102 .... Circuit Court of the United States for the District of Colorado ..... Frank W. Rollins, plaintiff, vs. The Board of County Commissioners of the County of Lake, defendant. Summons ..... filed this 3d day of February, A. D. 1887. .... Edward F. Bishop, Clerk ..... By F. W. Tupper, Deputy Clerk ..... Teller & Orahood, of Denver, attorneys for plaintiff.

And afterwards, and on to wit, the 1st day of July, A. D. 1887, came the said defendant by Daniel E. Parks, Esq., its attorney, and filed in said Court, and in said cause, its answer to the complaint, heretofore filed herein. And the said answer, is in words and figures, as follows, to wit:

Answer.

50 UNITED STATES OF AMERICA, } ss.
District of Colorado. }

In the Circuit Court of the United States held at Denver, within and for said District.

FRANK W. ROLLINS, *Plaintiff,*
v.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE, *Defendant.* } *Answer.*

I.

The above-named defendant answers the complaint of the plaintiff herein and for a first defense thereto alleges that except as hereinafter alleged it did not undertake or promise in manner or form as the said plaintiff has in his said complaint complained, and of this, the said defendant puts itself upon the country by

DANL. E. PARKS, *County Att'y,*
Attorney for Defendant.

II.

51 And for a second and separate defense to this action the defendant further answering denies that it was incorporated, as alleged in plaintiff's complaint, and acting as such in the years

A. D. 1876, 1877, or 1878, or before or up to the 8th day of February A. D. 1879, or has been so incorporated, or acting as such, ever since the first day of August, A. D. 1876; but the defendant alleges that it was created as such corporation on the said 8th day of February A. D. 1879, and not before, and that it has been acting as such ever since the said 8th day of February A. D. 1879, and not before That none of the duties or powers of the said defendant Board of County Commissioners, or of the said County of Lake, vested in or belonged to said Board, or County as alleged and set forth in plaintiff's complaint, before or until the creation of said County of Lake on the said 8th day of February A. D. 1879, since which time the powers of said Board and of said County of Lake have been, as provided by law, and not before or otherwise.

And the defendant denies that the supposed county warrants or orders, alleged and set forth in plaintiff's complaint, were issued, made, executed or delivered, to or for any one in accordance with the laws of the State of Colorado, or any or either of them, or any part thereof.

And the defendant denies that by the provisions of the laws of the State of Colorado, the supposed holder of said warrants, or any or either of them, upon the presentation of the same to the County Treasurer of said County of Lake for payment, there being no funds in the treasury to pay the same, was entitled to have said warrants or any or either of them, indorsed by said Treasurer as in said plaintiff's complaint is alleged, claimed and set forth.

52 Defendant denies that each, all, or any or either of said supposed warrants or orders, mentioned and set forth in said plaintiff's complaint, were duly, at any time, indorsed or presented to the County Treasurer of said County of Lake for payment. And defendant denies that said warrants or orders, or any or either of them, were at any time, in accordance with law, registered by said County Treasurer, in a book kept by him for that purpose.

And defendant denies that since the several dates alleged and set forth in the plaintiff's complaint the said warrants, or any or either of them, have drawn interest at the rate of ten per cent. per annum, or at the rate of any other per cent. per annum. And the defendant denies that all of said warrants, or any or either of them are due, principal or interest, from said defendant.

And defendant denies that at any time heretofore the said plaintiff bought or purchased said supposed warrants, or orders, or any or either of them, or any part thereof, for a valuable consideration, or otherwise, or that he bought or purchased them at all; and defendant denies that said plaintiff was at the time of the commencement of this action, or that he is now the owner or holder of any of said alleged and supposed warrants or orders, or any or either of them, or any part thereof, for value or otherwise.

And defendant denies that there was, at the time of the commencement of this action, or now is, due on said several warrants, specified and set forth in said plaintiff's complaint, or any or either of them, the sum of twenty-six thousand nine hundred and seventy-four dollars and fifty-three cents principal, or any other sum as

principal, or ten thousand seven hundred and ninety-nine dollars and fourteen cents ($10,799.14) as interest, or any other sum as interest.

III.

53 And for a third and separate defense to this action, and the allegations of the plaintiff's complaint herein, the defendant further answering, further alleges, that none and not one of the supposed warrants or orders, or any or either of them in the said plaintiff's complaint, alleged and set forth, was or were ever made, executed, issued, or delivered by said defendant, or the said Board of County Commissioners by lawful power or authority, or in pursuance of any act or law of the Legislature of the State of Colorado, for any of the purposes contemplated by law, by reason of which the defendant is not obligated thereby, and said warrants, or orders, and each and all of them, are absolutely void, and of no force or effect whatever, as against the defendant, of all which the plaintiff had in due time, due notice, and said plaintiff is not now, and never was a *bona fide* purchaser, or holder of any of said warrants or orders, for value, without notice of the premises herein alleged, by reason whereof the said plaintiff ought not to have and maintain this action against the said defendant.

IV.

And for a fourth and separate defense to this action, the defendant further answering, further alleges: That none of the said supposed warrants or orders alleged and set forth in said plaintiff's complaint, were, at any time, ever delivered to the plaintiff, nor did they, or any or either of them, ever at any time, become the property of the plaintiff, nor is the said plaintiff now, nor was he ever at any time, the lawful possessor, owner, or holder thereof. or any or either of them; nor are the said warrants or orders, or any or either of them, now, nor were they ever at any time heretofore, the property of the plaintiff, nor is the plaintiff now, nor was he ever at any time the owner of any, or either of said warrants or orders, or any part thereof; and that none of said warrants or orders were ever assigned or transferred to him, the said plaintiff by the payee thereof, by reason whereof the said plaintiff is not the real party
54 in interest in this action.

And defendant further alleges that it is not now and was not when this action was brought, indebted to the plaintiff in any sum or sums of money whatever on account of the said supposed warrants or orders, or any or either of them, or any part thereof, either for principal, interest or otherwise. And this the defendant is ready to verify.

Wherefore it prays judgment that it go hence hereof without day and recover its costs in this action.

V.

And for a fifth and separate defense to this action, the defendant further answering, further alleges, that each and every of the sup-

posed alleged county warrants and orders, mentioned and set forth as causes of action in the said plaintiff's complaint, was made and issued, or attempted to be made and issued, and the debt and obligation thereof contracted, or attempted to be contracted by the said defendant, the County of Lake, in direct violation, and contravention of section six of article eleven of the Constitution of the State of Colorado, in such case made and provided, and at a time, and on such times, to wit: The several and respective time and times when the said several supposed warrants and orders set forth in plaintiff's complaint, are alleged to have been made and issued, when the limitation of the aggregate amount of debt, or indebtedness, which could be contracted or incurred, by the defendant for all purposes, as prescribed by said constitutional provision, had been reached and exceeded by said defendant, and in this to wit:

1st. That said County of Lake was duly created by an act of the General Assembly of the State of Colorado, as such county, on to wit, the 8th day of February, 1879, and then became, ever since has been, and now is, a body politic, governmental, and corporate.

55 That at the several times alleged and set forth in the plaintiff's complaint, when it is alleged therein, that said several warrants and orders were made and issued and for and during the several years of the existence of said county, as such corporation, the total valuation of the taxable, real and personal property of said defendant, the County of Lake, was not less than one million dollars; and in truth and fact at such time, and at all of such times, such valuation, as assessed in pursuance to the laws of the State of Colorado, was and is as follows, to wit:

For the year A. D. 1879, three million, six hundred and seventy-two thousand seven hundred and three dollars ($3,672,703.00). For the year 1880, eleven million, twenty-five thousand, seven hundred and ninety-three dollars ($11,025,793.00). For the year 1881, sixteen million, four hundred and twenty-three thousand, four hundred and three dollars ($16,423,403.00). But such valuation was rebated by said defendant in accordance with the judgment and decision of the Supreme Court of the State of Colorado, to the sum of about five million and seventeen thousand dollars.

For the year A. D. 1882, four million, two hundred and forty-one thousand, five hundred and thirty-five dollars ($4,241,535.00); for the year A. D. 1883, three million nine hundred and six thousand, five hundred and ninety-nine dollars; for the year A. D. 1884, two million, eight hundred and ninety-six thousand, one hundred and seventy-five dollars; and for the year A. D. 1885, two million, four hundred and thirty-five thousand, seven hundred and three dollars ($2,435,703.00).

2d. That the said several valuations of said taxable property was and were and are fixed, under the laws of the State of Colorado in such case made and provided, at the sums aforesaid, on the third Monday of the month of July of each and every of the said several years; and on that day, in each and every of the said several

56 years, became, was, and were authoritative and obligatory, as a rule of action, in limiting the power of the said defendant,

and its said Board of County Commissioners, in the contraction of indebtedness under the said section and article of the said constitution, and thereafter the said third Monday of July in each of said several years, the capacity and power of the said defendant county to have or contract indebtedness, at any time during the year following said day to the third Monday of July of the succeeding year, was and became fixed and limited to six dollars on each one thousand dollars of such valuations, unless by a vote of qualified electors of said county such limit was or is increased to twelve dollars on each one thousand dollars of such valuation, where such valuation exceeds one million dollars, and is less than five million dollars. But where such valuation exceeds five million dollars, then and in that case such limit, without a vote, as aforesaid, is three dollars of each one thousand dollars of such valuation, and with a vote, six dollars of each one thousand dollars of such valuation; and that the extreme limit of the power of said defendant in contracting any indebtedness, under said section of said constitution, is, in valuations, over one million dollars and less than five million dollars, twelve dollars on each one thousand dollars of such valuations, and in valuations exceeding five million dollars, six dollars of each thousand dollars of such valuations.

3d. That at the time and times severally and respectively alleged in the plaintiff's complaint herein, as the time and times when said alleged and supposed warrants and orders were made, or attempted to be made and issued by the defendant and said Board of County Commissioners, and for and during the several years of the existence of said county as such corporation, and the several years when such valuations of taxable real and personal property of said defendant was ascertained and fixed as aforesaid, the lawful outstanding, valid and unpaid indebtedness of said county for all purposes, exclusive of debts contracted before the adoption of the constitution of the State of Colorado, was as follows, to wit: for the year
57 A. D. 1879, exceeding the sum of twenty-two thousand, thirty-six dollars and twenty-one cents; for the year A. D. 1880, exceeding the sum of thirty-three thousand, seventy-seven and 38-100 dollars; for the year A. D. 1881, exceeding the sum of fifteen thousand, forty-eight and 39-100 dollars; for the year A. D. 1882, exceeding the sum of twenty-five thousand, four hundred forty-nine and 20-100 dollars; for the year A. D. 1883, exceeding the sum of twenty-three thousand, four hundred and thirty-nine and 59-100 dollars; for the year A. D. 1884, exceeding the sum of seventeen thousand, three hundred and seventy-seven and 5-100 dollars; and for the year A. D. 1885, exceeding the sum of fifteen thousand dollars. And that at such time and times said indebtedness exceeded twice the rates upon the whole valuation of the taxable real and personal property of said defendant county, as specified in and by said constitutional provision.

4th. That none, and not one, of the said supposed and alleged debts or obligations, or any or either of the said several warrants or orders alleged, mentioned and set forth in said plaintiff's complaint herein, was made or attempted to be made, or the debt or obligation

thereof contracted, or attempted to be contracted by said defendant, under and in pursuance of, or by authority of, a vote of the qualified electors of said County of Lake, as provided in and by said constitutional provision, or the laws of Colorado, in such case made and provided; and all this the defendant is ready to verify, wherefore it prays judgment.

VI.

And for a sixth and separate defense to this action, the defendant further answering, further alleges that the said plaintiff's said action upon said supposed and alleged county warrants and orders,
58 alleged and set forth in said plaintiff's complaint, as warrants numbered 304 for five dollars; 394 for two and 90-100 dollars; 841 for two and 20-100 dollars; 1941 for two and 50-100 dollars; 1942 for two and 50-100 dollars; 2510 for twenty-seven and 50-100 dollars; 2559 for eight and 80-100 dollars; 2638 for twelve dollars; and 2658 for eight dollars, did not accrue to him, the said plaintiff, within six years next preceding the date of the commencement of this action, by reason of which the said plaintiff's said action is barred by lapse of time, under the statute of limitation of actions, of the State of Colorado, in such case and made and provided, which statute was in full force, operation and effect when the plaintiff's said action thereon was brought in this court, and this said defendant is ready to verify, wherefore the defendent prays judgment.

VII.

And for a seventh and separate answer to this action, and by way of modification and correction of the allegations of the answer hereinbefore averred and set forth, the defendant further answering, further alleges, that the warrant of said defendant described in said complaint as warrant number 6375 for forty-six and fifty one hundredths dollars, was and is now a lawful, valid outstanding obligation of defendant and unpaid, principal and interest. That on to wit: the 18th day of October, A. D. 1886, the defendant authorized and directed its County Treasurer to pay, satisfy and discharge the same to the lawful owner and holder thereof, principal and interest; that sufficient moneys to pay the same were, when this action was commenced, and now are, in the treasury of the said defendant, awaiting the presentation of said warrant by the lawful holder thereof, for payment; but the defendant avers that this court has no jurisdiction to take cognizance of, and give judgment in, actions of the character of this action, wherein
59 the matter in dispute exclusive of costs or the amount exclusive of costs, of property involved exceeds the sum of five hundred dollars ($500), and defendant says that should it be finally determined that this court has jurisdiction to give judgment in this action for a sum of money less than the sum of five hundred dollars ($500), then the defendent hereby offers to allow judgment against it for the money due on said warrants, with the costs of this

action accrued to this date, provided the plaintiff be the lawful owner and holder of said warrant for value.

VIII.

And for an eighth and separate defense to this action, the defendant further answering, further alleges, that the supposed warrants mentioned and described in said plaintiff's complaint, as warrants numbered 7721 for one hundred, forty-four and 51-100 dollars; 7812 for one hundred dollars; 10,929 for forty dollars, and 11,426 for four dollars, are what is known as raised warrants and illegal and void for that reason, because the defendant says, that each of said warrants were and are made, issued and delivered, or attempted to be made, issued and delivered, for sums of money greatly in excess of the claim or demand presented to the acting Board of County Commissioners of said County of Lake, and upon the allowance or attempted allowance of the same, such warrants were had, or attempted to be had, and in this to wit:—The sums of the claims in fact presented to said Board and allowed, or attempted to be allowed, by said Board and upon which said warrants were attempted to be made and issued, were and are as follows:

The true sum of the claim for which warrant 7721 was attempted to be made and issued, was and is ninety-seven and 71-100 dollars; that for which warrant 7812 was attempted to be made and issued was and is sixty dollars. That for which warrant 10,929 was attempted to be issued, twenty dollars; that for which warrant
60 10,937 was attempted to be issued, twenty dollars, and that for which warrant 11,426 was attempted to be issued, two dollars; of all which the plaintiff had, in due time due notice, by reason of which, the said warrants and each and every of them, are fraudulent and void, to the extent of at least the said raised part of each; and should this Court adjudge said warrants or either of them to be obligatory upon said defendant, overrule the other defenses to this action by the defendant, and give judgment for plaintiff, yet the said defendant says the said plaintiff, in that event, ought not to have and maintain this action thereof against the said defendant for the said raised part of said alleged and supposed warrants, and of this the defendant puts itself upon the country.

IX.

And for a ninth separate and further defense to this action, the said defendant further answering, further alleges, that each, all and every of said alleged and supposed warrants and orders mentioned, described and set forth in the plaintiff's said complaint, upon which this suit is brought, and sought to be maintained, and which warrants and orders are alleged in said complaint to have been sold, assigned and transferred to plaintiff, are, and each and every of them is, or are, as appears in and by said complaint, a chose, or choses, in action, or causes of action, originally made payable to the several and respective persons or payees in said several and respective warrants and orders named, and defendant alleges that at the

time and times mentioned in said complaint as the time and times when said several and respective warrants and orders were made and issued, or attempted to be made and issued, as well as at the time of the commencement of this action, the said several and respective original payees of said warrants and orders were and now are, citizens and residents of the State of Colorado; and suit
61 or suits on such alleged and supposed warrants and orders, or any or either of them, or any part thereof, may not be, and could not at any time heretofore have been, prosecuted or maintained in this Court by any of said several payees, to recover the contents of any thereof, or any of the moneys alleged to be due thereon it no assignment of any of said warrants had been made, and this the defendant is ready to verify. And defendant alleges that by reason of the premises herein averred, this Court had not, at the time of the commencement of this action, and has not now, jurisdiction or cognizance of this action, the subject matter thereof, or of the defendant therein.

Wherefore defendant demands judgment to be hence hereof dismissed without day and that it recover its costs in this behalf expended.

DAN'L E. PARKS, *County Att'y.*
Defendant's Attorney.

UNITED STATES OF AMERICA,
District of Colorado,
STATE OF COLORADO. } ss.

Daniel E. Parks, being duly sworn, says he is the County
62 Attorney of the County of Lake, the defendant in the foregoing and annexed answer, and duly authorized to make defense to this action. That said defendant is a governmental corporation and body politic of said state, organized and existing under and by virtue of the laws of said state. Deponent further says that he has read the within and foregoing answer, and knows the contents thereof, and that the same is true to the best knowledge and belief of affiant.

DANL. E. PARKS.

Subscribed and sworn to before me, this 30th day of June, A. D. 1887.

CHARLES A. HINCKLEY,
[SEAL.] *Notary Public.*

Endorsed: 2102. In the Circuit Court of the United States, for the district of Colorado, held at Denver, in said district. Frank W. Rollins, plaintiff, vs. The Board of County Commissioners of the County of Lake, defendant. Answer filed July 1, 1887. William A. Willard, Clerk. D. E. Parks, County Attorney, attorney for defendant, Leadville, Colo.

And afterwards, and on, to wit: the 21st day of July, A.
63 D. 1887, came again the said plaintiff, by his attorneys aforesaid, and filed in said court and in said cause, his replication to the answer, heretofore filed herein. And the said replication is in words and figures as follows, to wit:

Replication

IN THE CIRCUIT COURT OF THE UNITED STATES,
District of Colorado.

FRANK W. ROLLINS .
v.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE.

And the said plaintiff by way of replication to the fifth
64 and separate defense of the said defendant by it pleaded, comes and denies: that each or any of the said warrants in said complaint set forth, and described, or that the debt or obligation for which said warrants were issued, was or were contracted or attempted to be contracted by the said defendant in violation or contravention of article eleven, section six, of the Constitution of the State of Colorado, or in violation or contravention of any article of said constitution, or any law or constitution whatever, and denies that at the time when the said warrants or any of them were issued, there was any limitation by the said constitution or by any law or statute which had been reached or exceeded by the said defendant, and denies that the said defendant was created by an act of the General Assembly of Colorado on the 8th day of February, 1879, but avers, as in his complaint he has already averred, that said defendant was incorporated and had a legal existence prior to August 1st, 1875, and was doing and transacting all such business as since that time it has transacted, and was then and is now a body corporate and politic, by virtue of the act of Territorial Legislature of the Territory of Colorado, in November, 1861, and that the assessed valuation of said county did not reach a million until the assessment for taxes assessed and levied during the summer of 1879; and denies that the assessment for the year 1879, 1880, 1881, 1882, and 1883, 1884 and 1885, were as stated in said answer, but
65 avers that such assessment were for the amounts stated in plaintiff's amendment to his complaint, except that as to whether the amount for the year 1881 was by the Supreme Court of the state rebated, to the sum of five million and seventeen thousand dollars, this plaintiff has not sufficient knowledge or information upon which to found a belief, but he avers upon information and belief that the assessment never was rebated, and that such assessment has always stood and now stands on the books of the county and the State Auditor and State Treasurer as stated in the amended complaint at $16,434,973, and that that was the amount actually assessed for said year, and the amount of the assessment, and this plaintiff specially denies that the valuation of taxable property, and the assessment for said county under the laws of the State of Colorado, are fixed from year to year on the 3rd Monday of July of each and every year; and that the amount of the assessment of each year became authoritative and obligatory as a rule of action in limiting the power of defendant at that date, in any respect whatever; and denies that after the third Monday in July

of each year, the capacity and power of the defendant to have or to contract indebtedness at any time during the year following said last mentioned date, to the third Monday of the succeeding year was, or became fixed to six dollars on each one thousand dollars of such valuation, or to any other sum, unless such limit was increased by a vote of the qualified electors; and denies that such limitation of the said constitution applies to the contraction of all debts or of any such debts as were incurred by the said county for which, on settlement and auditing of which, the warrants in this suit sued on were issued.

And this plaintiff, further replying to said fifth defense, says as to whether the statement of indebtedness of the said defendant for the years therein mentioned, if true, this plaintiff has not, and
66 cannot obtain, sufficient information upon which to found a belief, and he therefore denies the same; and further alleges that, even if true, it was not in excess of any limitation of the taxable property of the said defendant county, applicable to such debts, and that none of the debts contracted by said county, for which the warrants in suit were given, were within any rule or limitation of the said constitutional provisions; the plaintiff, further replying, admits that none of the debts or obligations for which, and on audit and settlement of which, the warrants sued on were given, were made, contracted, or attempted to be made or contracted, by defendant under and in pursuance of the vote of the electors of said county under any constitutional provision of the State or of the laws of the State of Colorado, but this defendant avers that such debt and obligation were necessarily incurred by said defendant, by operation of law, in the carrying on of the business of the said county, and to meet the duties and obligations imposed on it by the constitution and laws of the State, and for the purposes of its organization, and were of such a nature as that they could not have been anticipated and provided for by any such vote, but were largely for salaries and fees for officers and other persons recognized by the constitution, and were also largely for fees and salaries fixed by the laws of said State, and which, by the constitution itself, the legislative assembly of the State were empowered to fix the amount that should become due to any person legally holding such offices and performing its duties, or performing other duties required by law. After which performance the legislature were, by the said constitution, authorized to fix the compensation.

This plaintiff further replying to the said fifth defense says that from the time when the State of Colorado was admitted the said section six of article eleven of its constitution was in the same identical language in which it is now found; that from the date of its adoption until some time subsequent to the date of the
67 issue of the latest warrants in said complaint set forth and sued on, not alone the County of Lake but each and every of such counties in the State which were called upon to construe it, through its and each of its Board of County Commissioners, to wit: From August 1, 1876, to January 1886, did by the action of said Boards, construe the said section six, article eleven, of the said

constitution to be a limitation and apply *only* to debts contracted by a county "by loan" for the purpose of erecting necessary public buildings, making or repairing public roads and bridges, and the said counties hereinafter mentioned including said defendant did, each of them, so construe said section, as to exclude from the operation any limitation of said section, all debts incurred in the manner the debts evidenced by the warrants in this complaint mentioned were incurred, and did in pursuance of such construction, not only audit and allow accounts and thus admit debts due and issue county warrants therefor; for debts other than those contracted by loan for public buildings and public road and bridges, and the repairs thereof, largely in excess if the constitutional limit had any application to such debts, but did also by providing for an indebtedness by loan, and by the issue of negotiable bonds of the said counties for such indebtedness by loan, construe the said section as above stated, and did in every instance submit to a vote, and on such ratification by a vote of the electors did issue almost the exact amount and no more, which by the exclusion of the debts of the character of the debts for which the warrants in suit were issued, alone, they could issue for the other purposes and for debts contracted "by loan" for such purposes, to wit: Public buildings and public roads and bridges and did issue for such last mentioned purposes, the full amount which is limited by such section, they might issue, for such purposes, or as it is now claimed by the defendants could have contracted in any manner or form, although there was also at
68 and before the issue of the said bonds or contracting of said debts "by loan," debts already contracted, and evidenced by outstanding warrants in very considerable amounts, in some cases fully up to the limitation if such limitation had been held to apply.

This plaintiff further shows that at the date of the making of the constitution in convention, there were but twenty-five counties in the State, to wit: Arapahoe, Bent, Boulder, Clear Creek, Conejos, Costilla, Douglas, Elbert, El Paso, Fremont, Gilpin, Grand, Hinsdale, Huerfano, Jefferson, Lake, La Plata, Larimer, Las Animas, Park, Pueblo, Rio Grande, Saguache, Summit and Weld, and that at the time of its adoption, August 1, 1876, there was but one more, San Juan, that at those dates, but ten of the counties, to wit: Arapahoe, Bent, Boulder, Clear Creek, Elbert, El Paso, Gilpin, Jefferson, Las Animas, Pueblo and Weld, had a valuation for assessment, of one million or more, and that the floating debt of nearly all of said counties, exclusive of the debts contracted for roads, bridges and buildings, and in aid of railways was inconsiderable, and was as follows:

Boulder County, ...	Unknown.
Arapahoe County, ...	None.
Bent County, ...	None.
Clear Creek County, ...	$29,336
Conejos County, ...	$ 8,694 12
Costilla County, ...	$ 9,806 10
Douglas County, ...	None.
Elbert County, ...	None.

	El Paso,	$10,024 23
	Fremont County,	$ 9,317 64
	Gilpin,	$ 3,371 52
	Grand,	None.
	Hinsdale,	None.
69	Huerfano,	$ 2,437 76
	Jefferson,	$10,191 13
	La Plata,	None.
	Larimer,	Unknown.
	Las Animas,	$27,150
	Park,	$ 7,859 95
	Pueblo,	$ 8,576 70
	Rio Grande,	$14,637 87
	Saguache,	Unknown.
	Summit,	None.
	Weld,	$ 500

And there was also indebtedness of the County of Clear Creek $6,000 voted for court house, also of

County of Gilpin to the amount of $13,050 for bonds given on purchase of public buildings and one hundred thousand railroad aid bonds of same county; also two hundred thousand of railway aid bonds issued by Boulder County.

Also, railway aid bonds to the amount of one hundred and thirty-three thousand, issued by Jefferson County.

Also, four hundred and fifty thousand of railway aid bonds issued by Pueblo County.

Also, eight hundred thousand railway aid bonds issued by Arapahoe County, and fifty thousand dollars issued for jail.

Also, fifteen thousand dollars road bonds of El Paso County for roads and bridges, making an aggregate of seventeen hundred and sixty-seven thousand and fifty dollars in bonds issued by six out of the twenty-five counties in bonds, while all the floating indebtedness existing by way of warrants in all the counties did not exceed one hundred and seventy thousand dollars.

70 This plaintiff further replying says that some time in May, 1880, there occurred in the County of Lake a labor strike, accompanied with acts of violence and turbulent meetings, threatening destruction to property, and death to persons, which said strike and disorder lasted from May 13th to June 19th, and was finally put down and suppressed only by the action of the State government, which said riot and disturbance made it necessary not only to employ troops, but a great many extra deputy sheriffs and other officers, which necessarily increased the necessary expenses of the county to an enormous amount, and that such expense on account of the number of inhabitants, 23,000, was greatly disproportionate to the amount of assessment of the previous year, $3,478,000, which expense continued for a long time and to such an extent that on the day of September, 1881, the total amounts of warrants of said county, issued, outstanding and unpaid, amounted to five hundred thousand dollars; and that at that date in accordance with an act of the legislature assembly

of the State of Colorado, entitled "An Act to enable the several counties of the State to fund their floating debts," approved February 21st, 1881, the said Board of County Commissioners of said County of Lake, did upon the petition of fifty electors of said county, submit to the qualified electors of said county, a notice requesting the holders of county warrants to submit a statement of the amount of said warrants, they would exchange at par for the bonds of the said county, and that thereupon such proceedings were had, that at the next general election, to wit: in November, 1881, the question of exchanging five hundred thousand dollars of the said indebtedness of the county, existing in the shape of county warrants for a like sum in the bonds of said county, was submitted to the qualified electors of said county, all and every of the said proceedings precedent thereto having been fully, and finally complied with,
71 and thereupon the votes so cast having been canvassed, the said Board did afterwards declare the proposition carried, and did decide and adjudge that said amount of five hundred thousand dollars was a valid indebtedness, and should be exchanged for the bonds of the said county, at the option of the holders thereof, and thereupon the said warrants to the amount of five hundred thousand were exchanged for bonds of a like amount of the said county, and the said warrants cancelled; and that all of these proceedings in exchanging such warrants for bonds were spread upon the records of the said county. And thereupon and from that time, to wit: from the 2d day of January, 1882, the said Board of County Commissioners and each and every officer of said county, or person transacting business with or doing work for the county proceeded to do business, without any reference to the limitation of the said section as now by the said defendant construed, and the said Board of County Commissioners did from hence forward, as before that time, audit, allow and settle claims against the said county, and order the issue of warrants therefor, although they well knew that at the date of issuing said bonds, the amount of said indebtedness by outstanding warrants, had reached and exceeded the amount that is now claimed by it, it was limited to by said constitutional provision; that from thenceforward and for a period of more than five years, they continued thus to audit, allow, and settle such claims and order the issue of the warrants of the said county therefor, keeping a record of their doings and orders, in the proper books of the said county, and did among others audit, settle and allow their own accounts, that is the fees of the members of the said Board, for the fees allowed them by law as well as all other fees and salaries of others, as fixed by law; that during all the time, in fact from 1876, the said warrants were from time to time presented by the holders thereof to the treasurer for payment,. and by him endorsed as by law provided, which endorsement was in words following:
72 "No funds, this warrant draws interest from this date at the rate of ten per cent. per annum," which said endorsement was duly signed by the treasurer of said county, and the said warrants were also by the said treasurer duly registered according to law, as though valid, and during all that time to wit: From 1876

	El Paso,	$10,024 23
	Fremont County,	$ 9,317 64
	Gilpin,	$ 3,371 52
	Grand,	None.
	Hinsdale,	None.
69	Huerfano,	$ 2,437 76
	Jefferson,	$10,191 13
	La Plata,	None.
	Larimer,	Unknown.
	Las Animas,	$27,150
	Park,	$ 7,859 95
	Pueblo,	$ 8,576 70
	Rio Grande,	$14,637 87
	Saguache,	Unknown.
	Summit,	None.
	Weld,	$ 500

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72 "No funds, this warrant draws interest from this date at the rate of ten per cent. per annum," which said endorsement was duly signed by the treasurer of said county, and the said warrants were also by the said treasurer duly registered according to law, as though valid, and during all that time to wit: From 1876

to 1886 the said warrants were at all times received by the said treasurer of the said County of Lake, in payment of county taxes, whenever presented by persons owing taxes in said county, up till about the 1st of October, 1885, when for the first time, the treasurer of said county refused to receive any warrants in payment of county taxes, but this plaintiff avers, that his refusal at that time, and from that time up to about the first of January, 1887, was put, not upon the invalidity of any such warrants, but on account of and for the reason that, by an act of the Legislative Assembly of the State of Colorado, entitled, "An act to provide for the payment of county and road taxes in cash," Approved April 7th, 1885, and no objection or refusal on the part of the said treasurer or any officer of said county was ever put upon the ground of any invalidity growing out of their being in excess of the constitutional limit, until after the Supreme Court of the State had decided that the law of 1885 did not apply to warrants issued prior to July 7th, 1885.

The plaintiff further shows that what is above alleged as to the action of the Board of said Lake County, as to settling, auditing and allowing accounts against the county and issuing county warrants therefor, and as to the action of the county treasurer in endorsing such warrants when presented, and in receiving such warrants in payment of county and road taxes, without raising any objection, on account of any invalidity arising out of the constitutional provision, is also true of every county in the State, in which the indebtedness of the county has reached the amount claimed as limited, and
73 as this plaintiff is informed and believes, the validity of such warrants has not been denied by a refusal to pay or to receive them in payment of taxes, up to this time, by any of the counties of the State, except Lake, Gunnison, Chaffee, Custer, and Rio Grande counties, all the other counties adhering to the construction of the law heretofore put upon it by them.

The plaintiff further shows that he is informed and believes that from one-half to three-fourths of all the county taxes of the several counties of the State, have been paid from 1876 to January 1st, 1886, in county warrants; the greater part of which has been paid in the counties where the warrants are in excess of what is claimed as the limitation, in warrants, which if so limited, were illegal and invalid.

This plaintiff further shows that, a construction has also been put by several of the counties, and by all of the counties which have been called to act in any case where construction was necessary, upon said section, in this to wit: In issuing bonds and contracting a debt "by loan" within the intent of said section for roads, bridges, and public buildings, upon their valuation, applying the limitation to these purposes alone: As follows Boulder on valuation of $3,513,535. Issued court house bonds April 1st, 1882, $42,000. The extreme limit of the construction contended for, now, by defendant, being $42,162. Chaffee county, on valuation of $1,649,992. Court house bonds Dec. 1st, $20,000. Extreme limit, $19,800. Fremont county court house bonds on valuation of $1,697,005. Dec. 20th, 1880, $20,000. Extreme limit, $20,364. Lake county valuation, $11,126,174. Court house bonds, July 31st, 1880, $50,000. Extreme

limit, $66,757. La Plata, valuation, $2,162,000. Issued $25,000 bonds, April 1st, 1883. Extreme limit, $25,944. Mesa county valuation, $1,242,000, issued $14,900 bonds Dec. 1st, 1885. Extreme limit, $14,904. No other counties issued bonds since the adoption of the constitution except Gunnison county, $20 000. Issued prior to time where its valuation reached one million.

74 This plaintiff further avers that at the time, when the said issuance of said court house bonds of $50,000 was voted upon, to wit, October 7th, 1879, and at the date of the issuance of said bonds, July 31st, 1880, the said County of Lake was indebted, by warrants of said county outstanding and unpaid, in a sum exceeding seventy thousand dollars, none of the said $50,000 being used to take up or pay such warrants.

This plaintiff further shows that the County of Gunnison, in said State, contained in 1877 a population of a few hundred only, which, by the year 1881, had increased to upwards of 8,000; that, on the 7th day of November, 1882, at the general election for said year, a majority of the voters of said county voted to exchange the valid floating indebtedness of said county at par for an equal amount of the bonds of the said county, to the sum of three hundred thousand dollars, which said election was held, and the question submitted, under said act of February 21st, 1881, providing for funding the floating indebtedness of the counties, and above referred to, and all acts done relating thereto were in full, perfect and complete compliance with the terms of said law; that in pursuance of said vote, the said Board of County Commissioners of said county did issue its bonds, and did exchange them at par for warrants before that time outstanding and unpaid, to the amount of two hundred thousand dollars or more, and that at that date the amount of such warrants was at least four times the amount that could be legally issued, on the construction of said section 6, now contended for by defendant, and thereupon the said warrants having been cancelled and exchanged for bonds, the said Board of County Commissioners proceeded to audit, allow and settle accounts against the county, and issue warrants therefor, and henceforth, and ever since, until sometime in December, 1886, continued to issue such warrants

75 without reference to the limitation of the said section, and far in excess of the limitation as now contended for by defendant, exclusive of the $20,000 bonds issued before the county reached the valuation of a million, and exclusive of said funding bonds above mentioned.

And this plaintiff, further answering, says that on the 19th day of May, 1883, one John Fitzgerald began a suit in this Court against said defendant, on the warrants of said County of Lake, several hundred in number, and being of various dates between October 3d, 1881, and January 1st, 1882, in which, by an order of the said defendant, entered of record, one Daniel E. Parks, then, and now the county attorney of Lake county, was empowered to appear and defend, and the said attorney thereupon appeared and filed the answer of the said defendants, making separate defenses, denying the execution of the warrants, the ownership, etc., also denying in

general terms that defendant was indebted to plaintiff, and, lastly, that many of the warrants had been inflated, or given for a larger sum than was really due, but nowhere in any manner setting up, or in any way alluding to the alleged constitutional limitation, and afterwards the said parties to said suit, by stipulation duly signed by the said defendants' attorney, and with full knowledge thereof, and with assent of the said defendants, it was stipulated that the sum of $677.72 should be deducted in small amounts from some warrants, and that plaintiff should have judgment for the sum of $13,766.83, which stipulation and judgment entered therein bears date May 16th, 1884, which said judgment has never been appealed from, or in any manner objected to, and has been, as plaintiff is informed and believes, partially paid by defendant, but still remains unsatisfied of record; that, on the 23d day of September, 1883, one Lucian Baker also begun in this Court a suit against said defendant on county warrants of Lake County, on warrants bearing various dates, from November, 1881, up to some time before the filing of
76 said complaint, to which the said defendant appeared by its attorney, one D. J. Haynes, and the answer of defendant was therein filed, denying the execution and ownership of the warrants and denying the indebtedness in general terms, and setting up that said warrants were inflated, but not alluding to any constitutional provision whatever, and afterwards a stipulation was filed by the said parties stipulating that certain warrants might be withdrawn by plaintiff, and judgment entered on the balance for the amount of such warrants and interest in the sum of $15,982.70, which judgment was entered in this Court November 12th, 1883, and still stands of record herein and not in any manner appealed from or assailed by said defendant; that on the 11th day of February, 1885, one Henry D. Winters began a suit in this Court against said defendant on several hundred warrants, of said County of Lake, bearing date at different times between February 2d, 1880, and January 17th, 1883. That afterwards, on the 19th day of May, 1884, this plaintiff having become the owner of all the warrants in said suit sued on, applied to this Court, and was thereupon substituted as the plaintiff in said suit in lieu of the said Winters, and thereupon the said defendant, appearing by its attorney, Daniel E. Parks, the said Parks, with full knowledge of the said defendant and of the said Parks of all the facts in the case, and knowing full well that at the time the extreme limit of its power to incur debt, as now contended for by defendant, had long before that time, and before the issue of the warrants in suit, been reached, and that the amount named in such stipulation was in and of itself alone, beyond and in excess of the limit now contended for by defendant, stipulated with plaintiff, who was then and is now relying on the same construction as the said defendant was then acting upon, to wit: that the constitutional limitation did not apply to debts of the character of said warrants, by which stipulation it was agreed that certain warrants num-
77 bered in said complaint as number from 1 to 41, and both inclusive, and numbers 350 and 351 should be withdrawn and dismissed from said complaint, and that there was then due and

owing on the remaining orders the sum of $42,883, and that judgment should be entered therefor, and judgment was thereupon entered for said sum, May 12th, 1885; which said judgment remains unreversed and unassailed, and has never been satisfied or discharged, and that at no time or place in said suit, did the defendant claim anything under section 6, article XI of the constitution, nor had this plaintiff any reason whatever to suppose that it would ever contend for any such construction as now contended for; that in June, 1884, one Ransom Chase recovered a judgment in this Court in the sum of $1,441.13 for certain coupons for interest falling due Jan'y 1st, 1884, on certain of the said funding bonds of the said County of Lake above referred to, upon which said judgment it has since paid, to wit: Feb'y 7th, 1885, the sum of $1,529; no defense of any kind having been made by the said defendants.

This plaintiff further says that from the 31st day of July, 1880, up to January, 1886, the said defendant paid the interest on its said $50,000 in bonds issued for the purpose of erecting a court house, as above set forth, although it was well known that the outstanding unpaid warrant indebtedness of said county was greatly in excess of the amount it could have issued for any or all purposes if the limitation now contended for by it did apply to such debts, but that since Jan'y, 1886, the said defendant has, as plaintiff is informed and believes, refused to pay interest on said bonds, because, as it now asserts, the limit fixed by Article XI, section 6, had been reached and passed before the issuing of said bonds.

This plaintiff shows that on the 21st day of October, 1884,
78 one Peter Becker recovered a judgment against said defendant, largely for sheriff's fees, due from said county, in the district court of Lake county, in the sum of $18,570; that on the 17th day of October, 1885, Dennis Sullivan and Charles Hall also recovered a judgment against said defendant in the same court for the sum of $4,000, neither of which judgments were ever appealed from or in any manner assailed, nor was any defense of constitutional limitation set up, or alleged by it.

Plaintiff further says that some time in the summer of 1886, one Daniel E. Parks, county attorney of said county, presented his bill for services rendered to said board of said county, which said bill was audited and allowed at the sum of five thousand dollars, and thereupon a suit was instituted in the district court of Lake county against said defendant for said amount, and a judgment was duly entered therein against said county, on said account, and a warrant issued thereto in the sum of five thousand dollars, the said defendant making no defense whatever to said judgment.

This plaintiff further says that all of the indebtedness on which said last mentioned judgments were rendered was incurred subsequent to the date of the warrants sued on in this case, and where the indebtedness was largely in excess of the limitation as now contended for by defendant; and further, he avers that the indebtedness on which the said judgment of Daniel E. Parks was given for services rendered during the years 1885 and 1886, and when the said indebtedness of the said county consisted of the funding bonds

above mentioned, the court house bonds also mentioned, and outstanding warrants to an amount exceeding twice what it could be if the limitation now contended for by defendant is held to apply; that on the 14th day of May, 1885, a judgment was also rendered against said defendant in the district court of Chaffee county for the sum of $13,670.31, on warrants of said defendant, to
79 which suit defendant made no defense; all of which last mentioned judgments are still existing and unassailed by the defendant, though the greater part of all these judgments has been paid by defendant, but are not yet discharged or cancelled; that on the 15th day of May, 1883, one James H. Morris recovered a judgment in the district court of Arapahoe county in the sum of $29,992.20 against said defendant, which said judgment was recovered upon warrants of said county issued in 1881 and 1882; also in same court on the 13th day of Jan'y, 1886, a judgment was recovered against said county in favor of L. H. Eicholtz for the sum of $6,514.09, both of which judgments were rendered upon county warrants bearing date between 1881 and 1885, and all issued at a time when the debts already incurred was largely in excess of the limitation as now contended for by defendant, and no steps have been taken to appeal the same, but, on the contrary, twenty-six thousand dollars has been paid by the said defendant on the said judgment in favor of Morris, and the balance is still unpaid.

This plaintiff further says, that since the adoption of the constitution there has also been formed a number of counties, and that of all the counties in the State in 1885, numbering forty, thirteen, to wit: Archuleta, Costillo, Delta, Dolores, Eagle, Garfield, Grand, Hinsdale, Ouray, Routt, San Juan, San Miguel and Summit had valuation less than one million, and of the remaining twenty-seven counties, eighteen, to wit: Boulder, Chaffee, Clear Creek, Conejos, Custer, Fremont, Gunnison, Huerfano, Jefferson, Lake, La Plata, Larimer, Las Animas, Mesa, Montrose, Park, Rio Grande and Saguache had, up that date, contracted debts largely in excess of the constitutional limitation, as now contended for by defendant for ordinary expenses, over and above the amounts in several counties, of debts contracted for roads, bridges and buildings, and nine counties, to wit: Arapahoe, Bent, Douglas, Elbert, El Paso, Gilpin,
80 Pueblo, Pitkin and Weld had each contracted no debts or, if any, much less than prescribed by the said provision, and no county had, at any time or place, ever submitted the question of incurring any such floating debt to any vote of the people, although the debt so cotracted and outstanding was not only in excess of what could be contracted without a vote, but also in excess of what could be contracted by aid of such vote, if the limitation contended for was applicable thereto.

And the said plaintiff replying to the said sixth defense says he denies that the said action on the said warrants in said sixth defense mentioned, did not accrue to him within six years next preceding the date of the commencement of this action; and the plaintiff replying to the said eighth separate defense of the said defendant says, that as to whether said warrants in said defense mentioned, were

issued in excess of what was actually due, this plaintiff has not and cannot obtain sufficient information upon which to found a belief, but avers that if so, he never had any notice thereof, and for the purpose of this action and to avoid vexation and delay, he submits to the statement and offers to take judgment on said warrants for the amount named in said defense as the true amount at which the warrants should have been issued, if issued at all.

And this plaintiff further replying to said ninth separate defense of said defendant, denies that this court has not jurisdiction of this cause, but avers that all of said warrants were issued payable to bearer, and are due and payable to the said plaintiff without endorsement or assignment.

Wherefor plaintiff prays judgment, &c.

TELLER & ORAHOOD,
Attorneys for Plaintiff.

81 STATE OF COLORADO, } ss.
County of Arapahoe, }

Willard Teller, being first duly sworn, says he is one of the attorneys for the plaintiff in foregoing suit, that said plaintiff is not within this State. That he has read the foregoing replication, and the same is true therein stated except as to matters stated on information and belief, and as to them he believes it to be true.

WILLARD TELLER.

STATE AND DISTRICT OF COLORADO, ss.

Subscribed and sworn to before me this twenty-first day of July, A. D. 1887.

WILLIAM A. WILLARD,
(Seal.) *Clerk District Court of the United States.*

Endorsed.

2102. U. S. C. C., Dist. of Colo. F. W. Rollins vs. Board of County Commissioners of Lake County. Replication. Filed July 21, 1887, William A. Willard, Clerk. Teller & Orahood, plaintiff's attorneys.

82 And afterwards, and on to wit the 7th day of May, A. D. 1888, the same being one of the regular juridical days of the May term, A. D. 1888, of said court. Present: the Honorable David J. Brewer, Circuit judge, the following proceeding was had and entered of record in said court, and in said cause, to wit:

Order: Trial and finding for Plaintiff.

2102 FRANK W. ROLLINS, *v.* THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE. } *Money Demand.*

At this day comes the said plaintiff, by Willard Teller, Esq., his attorney, and the said defendant by D. E. Parks, Esq., its attorney, also comes.

And this cause having heretofore come on to be tried by the Court upon an agreed statement of facts, without a jury, pursuant to a written stipulation thereto herein filed, and the Court having heard the same and the arguments of counsel and taken the matter under advisement, and the Court being now sufficiently advised in the premises, doth find for the said plaintiff, and assess his damages at forty thousand, eight hundred and sixty-three dollars and fifty-nine cents ($40,863.59).

Wherefore, it is considered by the Court, that judgment be entered herein, in favor of the said plaintiff and against the said defendant for the said sum of forty thousand eight hundred and sixty-three dollars and fifty-nine cents ($40,863.59), and the said plaintiff's costs to be taxed.

To which finding by the Court, the said defendant in due form excepted.

And thereupon, and on the same day, to wit: the 7th day of May, A. D. 1888, judgment was duly entered on the judgment book of said court, against the defendant, in said cause, in pursuance of the statutes, and rules of Court, to wit:

83 *Judgment.*

2102 FRANK W. ROLLINS, *v.* THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE, } *Money Demand.*

On this 7th day of May, A. D. 1888, the same being one of the regular juridical days of the May term, A. D. 1888, of said court. There being present the Honorable David J. Brewer, Circuit Judge.

It is considered by the court, that the said plaintiff do have and recover from the said defendant forty thousand eight hundred and sixty-three dollars and fifty-nine cents, [$40,863.59] his damages by the occasion of the premises in his complaint mentioned in form aforesaid, assessed, and his costs by him in this behalf laid out and expended to be taxed.

And afterwards, and on to wit: the 2nd day of July, A. D. 1888, the same being one of the regular juridical days of the May term, A. D. 1888, of said court; present: the Honorable David J. Brewer, Circuit Judge, the following further proceeding was had and entered of record, in said court and in said cause, as of the 30th day of June, A. D. 1888, to wit:

Order: Motion to Vacate Judgment and Grant New Trial Denied.

2102 FRANK W. ROLLINS, *vs.* THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE. } *Money Demand.*

At this day comes the said plaintiff by Willard Teller, Esq., his attorney, and the said defendant by D. E. Parks, Esq., its attorney, also comes.

And the motion of the said defendant to vacate the judgment lately had herein and for a new trial of the issues herein, having heretofore come on to be heard and having been submitted to the court, and by the court taken under advisement, and the court being now sufficiently advised in the premises, it is ordered by the court, for good and sufficient reasons to the court appearing, that the said motion be denied.

And thereupon the said defendant excepts to the said order and ruling of the court.

84 And afterwards, and on to wit: the 5th day of July, A. D. 1888, came again the said defendant, by its attorney aforesaid, and filed in said court and in said cause its bill of the exceptions reserved by it upon the trial of this cause. And the said bill of exceptions is in words and figures as follows, to wit:

Bill of Exceptions.

UNITED STATES OF AMERICA, *District of Colorado,* } ss.

In the Circuit Court of the United States, of the 8th Judicial Circuit of said United States, held at Denver Colorado, within and for said district.

FRANK W. ROLLINS, *Plaintiff,*
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE, *Defendant.* } No. 2102.

Bill of Exceptions.

Be it remembered that in the term of November, in the year of our Lord, one thousand eight hundred and eighty-seven, and on to wit: the first day of February, A. D. 1887, came Frank W. Rollins, plaintiff, by Teller & Orahood, his attorneys, into the said Circuit Court, before the judges thereof, and impleaded the

85 Board of County Commissioners of the County of Lake, Colorado, in a certain plea and complaint in debt upon promises; on which the said Frank W. Rollins complained and declared against the said Board of County Commissioners of the County of Lake as alleged and set forth in the said plaintiff's complaint made, filed and of record in this cause fully appears, to which complaint and declaration the said Board of County Commissioners of the County of Lake, did on, to wit: the first day of July, A. D. 1887, appear in said cause and court by its attorney, Daniel E. Parks, Esq., and make and file answer to the allegations of the said complaint, as alleged and set forth in the said defendant's answer made, filed and of record in this cause, to which answer on the 21st day of July, A. D. 1887, the said Frank W. Rollins, plaintiff, did, by his attorneys, further appear in said cause and court, and make and file in said cause his replication thereto, as alleged and set forth in

said plaintiff's replication, made and filed and of record, in this cause fully appears.

And thereupon issue was joined between the said Frank W. Rollins, plaintiff, and the said The Board of County Commissioners of the County of Lake, Colorado, defendant.

And afterwards, to wit: on the 12th day of January, 1888, before said Court at the sitting thereof, at the November term, A. D. 1887, held at Denver aforesaid, before the Honorable David J. Brewer, Circuit Judge of the United States of said Circuit, appointed to hold said Court according to the form of the statute in such case made and provided the aforesaid issue so joined between said parties aforesaid came on to be tried by and before said Court and said Judge presiding: a jury being expressly waived by the parties to this cause, and thereupon the following proceedings were had on such trial herein, to wit: the said parties coming by their said attorneys respectively, produced, offered is evidence, and submitted to said Court on such trial as evidence thereon in this cause a state-
86 ment, agreement and admission of facts in writing *in haec verba*, to wit:

THE UNITED STATES OF AMERICA, } ss.
District of Colorado. }

In the Circuit Court of the United States held within and for said district.

FRANK W. ROLLINS, Plaintiff,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE, Defendant.

It is hereby for the purposes of this action stipulated that the facts relating to this action are as follows, to wit:

That for the fiscal year ending December 31st, 1875, the amount of valuation of the several counties and the amount of indebtedness for ordinary county purposes, including debts for roads and bridges, was substantially as follows:

	County.	*Valuation.*	*Debt.*
	Arapahoe,	$12,722,268	None.
	Bent,	2,172,052	None.
	Boulder,	2,744,130	Unknown.
	Clear Creek,	2,210,328	$29,336
	Conejos,	123,592	8,694
87	Costilla,	197,274	9,806
	Douglas,	1,138,294	None.
	Elbert,	1,743,508	None.
	El Paso,	3,281,313	10,024.
	Fremont,	1,479,477	9,317.
	Gilpin,	2,200,361	3,371.
	Grand,		None.
	Hinsdale,	18,069	None.
	Huerfano,	630,743	2,437.

Jefferson,	1,990,417	10,191.
La Plata,	68,429	None.
Larimer,	1,119,600	Unknown.
Las Animas,	1,468,441	27,150.
Park,	795,126	7,859.
Pueblo,	3,868,503	6,576.
Rio Grande	438,080	14,637.
Saguache,	704,686	Unknown.
Summit,	140,759	None.
Weld,	2,968,654	500.
Lake (old county),	356,461	Unknown.
	Total, $44,690,933	Total, $139,999.

Less three counties unknown.

That at the same time the county of El Paso was indebted $15,000 in bonds for roads and bridges; Gilpin County, $13,050 for purchase of public buildings; Clear Creek, $6,000 for public buildings; Arapahoe $50,000 for jail buildings; making in all bonds to the amount of $15,000 for roads, and sixty-nine thousand and fifty dollars ($69,050) for buildings, and there was at that time not more than three (3) counties which owned a court house, and but four (4) or five (5) that owned its jail.

88 The bonds of certain counties in aid of railroads then outstanding was as follows:

Arapahoe,	$800,000
Boulder,	200,000
Gilpin,	100,000
Jefferson,	133,000
Pueblo,	450,000
	$1,683,000

And this was substantially the standing of these counties in December, 1875, when the Constitutional Convention met.

The State constitution was adopted by the convention March 14, 1876, ratified by popular vote July 1, 1876, the State admitted into the Union by proclamation August 1, 1876, and the first meeting of the State legislature was held on the first Wednesday in November, 1876.

Second—That from 1874 to March, 1877, the County of Lake included territory extending from the northwest corner of Park County to the west boundary of the State, including what has since been organized into the counties of Chaffee, Gunnison, Pitkin, Mesa, Montrose and Delta. That in 1877, the west portion was taken off and named Gunnison; and February 8, 1879, the present County of Lake was carved out of the old County of Lake and called Carbonate County, the remaining portion being left in existence as the County of Lake, and on the 10th day of February the name of the County of Carbonate was changed to Lake, and the name of Lake to Chaffee County. That the assessed value of the original organ-

ization known as Lake County in 1876, was $395,361; for 1877, $364,511; for 1878, $603,858; that the assessed value of the defendant County of Lake in taxable property was and is as follows, viz:

89 For 1879, $3,672,703; for 1880, $11,025,793; for the year 1881, $16,423,403, which latter assessment was cut down by the judgment and decision of the Supreme Court of the State in 1882, to the sum of $5,017,000; for the year 1882, $4,241,535; for the year 1883, $3,906,599; for 1884, $2,896,175; for the year 1885, $3,435,703.

Third—That from the date of the adoption of the State Constitution up to July, 1886, the several counties of the State issued their warrants as provided by statute, and these warrants were received by parties rendering service, etc., and when duly presented to the Treasurer of the county, in any of the several counties at any time, and there were no funds to pay the same they were registered according to law, and any and all such warrants when presented for that purpose, were received in payment of county taxes, up to October, 1885, and the question of the validity of county warrants on account of being in excess of the amount limited by the constitution was made by the defendant County of Lake after that date, and a very large portion of the taxes of all the counties has been paid ever since 1876 in such warrants; the said warrants were also paid by several county treasurers either on presentation, or in the order of registration and no notice was taken or distinction made, as to the amount of warrants issued prior to the date of such warrant, and no objection was, prior to July, 1886, made by the Board of County Commissioners of any county except the defendant County of Lake in issuing such warrants, or the Treasurer of the county in receiving them, for taxes or in paying them, that they were in excess of any constitutional limitation, except the County of Lake the defendant.

Fourth—That in addition to the issuance of county orders and warrants, by which the counties became indebted, the following named counties at the date mentioned and having valuation of the preceding year as stated, issued bonds, for the erection of public buidings, roads and bridges; that is to say, so far as concerns the defendant Lake County, the issuing was an attempt and the

90 bonds were invalid and void as is alleged and claimed by said defendant and their validity is not admitted by this stipulation.

	Term.	*Valuation.*	*Amount.*
Boulder,	April, 1882,	3,513,535	42,000
Chaffee,	December, 1882,	1,649,990	20,000
Fremont,	December 20, 1880,	1,697,005	20,000
Lake,	July 31, 1880,	11,126,174	50,000
Mesa,	December, 1885,	1,242,000	14,900

That at the time of issuance of these bonds, each and all of these counties had debts, existing by means of warrants to amounts as follows: Boulder County, $1,365; Chaffee County, a general county

warrant debt of $66,322; road warrants, $7,767; and its ordinary, county warrant debt, converted into funding bonds, $75,000; total, $169,089. Fremont County, general warrants, $14,638; road warrants, $7,779; total, $22,418. Lake County, July 1st, 1880, general warrants, $198,394; road warrants, $10,000; total, $208,349; while January first, 1882, it had general warrants, $293,063; road warrants, $19,499; total, $312,562. Mesa County, July first, 1885, general warrants, $35,648; road warrants, $3,590; total, $38,239; and December 31st, it had $50,138 of general warrants and road warrant debt.

Fifth—In 1870, the population of Lake County, including the territory of the present counties of Chaffee, Pitkin, Gunnison, Mesa, and Delta, and also of the counties of Hinsdale, Rio Grande, and La Plata, had a population of 522. The county, as it existed in 1876, was less in territory from what it was in 1870, by the Counties of La Plata, Rio Grande and Hinsdale, and its population could not have exceeded 1,000 since its vote in July, 1876, was but 228. The population of the defendant, County of Lake, as appears by census of 1880, taken in June, was 23,563, while the counties that in 1875-6 formed a part of it had a population of 14,747, to wit: Chaffee, 6,512; and Gunnison, 8,235, making a total population within the territory of the old County of Lake, as it existed at the adoption of the Constitution, of 38,310, as against 1,000, as it existed in 1875. By State census of 1885, the population of Lake County, defendant, in 1885, was 16,763, and the total valuation of its taxable property as assessed was $2,435,703 dollars. The original territory of the original County of Lake, which, as organized and as it existed from 1875 to 1879, and including Gunnison and Chaffee, had a population in 1885 of 27,422, and an assessed valuation of taxable property of about $7,192,254.

91

Sixth—That in September, 1881, defendant Lake County, having then a supposed general warrant debt of upwards of $550,000, and a supposed bonded debt for the erection of public buildings of $50,000, through its Board of Commissioners claiming to act under an act of the Legislature of February 21st, 1881, submitted to the qualified electors of said county, the question of the issuance of $500,000 of county bonds at eight per cent. interest, in exchange for outstanding warrants, and such proceedings were had, that said county did, on the first day of January, 1882, exchange $500,000 of its said bonds for $500,000 of warrants face and interest, and from that time until 1885 annually paid a portion of the interest due on said bonds, and continued to issue county warrants as before in payment of the county expenses; and that the outstanding warrant debt of the County of Lake amounted at the time of the issue of said bonds over and above the warrants exchanged for bonds to the sum of $85,167, and by the limitation claimed by defendant under the Constitution of Colorado, on the valuation of 1880, the legal debt of said defendant for all purposes was $33,077.38.100, and no vote was ever had by the qualified electors of said defendant county in respect to incurring any of the supposed debts represented by warrants sued upon in this

92 action. That prior to Dec. 1st, 1882, Gunnison county having a warrant debt of $169,700 and upwards, and having also a debt by bonds, for the erection of a court house, to the amount of $20,000, did, through its Board of Commissioners, claiming to act under the act of February 21st, 1881, fund and exchange the said warrants to that amount, and did continue also to issue its warrants, the amount of which has been, nearly all the time since 1882, in excess of the limit now claimed, and up to December, 1885 amounted to $310,000, exclusive of the bonds spoken of, the interest upon the bonds having been paid by the county from 1882 up to 1885.

In Chaffee County, from December 1st, 1882, there was a warrant debt outstanding of $121,000, and thereafter at an election held for that purpose, the county voted to issue $20,000 in court house bonds, and $121,000 in funding, the latter in exchange for county warrants, and both of said amounts were issued, and the county proceeded to issue its county warrants to pay ordinary expenses, as before, and continued to do so up until December 3rd, 1885, at least, and from 1882 to 1885 this warrant debt ranged from $60,000 to $120,248.00.

In April, 1885, the legislature passed an act appropriating $25,000 in money to build a bridge across Grand river in Mesa County, on condition that such appropriation could not be used until Mesa County should contribute to such bridge $15,000. The Board of Commissioners of Mesa County called an election and in the summer of 1885, the county voted bonds to the extent of $14,900. It then had a warrant debt of $46,000. Its valuation was $1,242,384, and the extreme limit of indebtedness under the constitution, if it applied to public buildings, roads and bridges, alone, and did not include any warrant debt, was by vote of qualified electors $12 on each $1,000 of valuation, viz., $14,908.60, and the county issued $14,900 only in bridge bonds, notwithstanding the said warrant debt $46,000.

7. From the adoption of the constitution up to the 1st of
93 January, 1886, and before any question had been raised, upon the question of whether the constitution did or did not limit ordinary county indebtedness, the number of counties had increased from 25 to 40. Of these 14 had a valuation, for 1885, of less than one million, and of the remaining 26, sixteen had considerably exceeded the constitutional limit, and ten had not, but these ten counties were counties having an aggregate assessment of $72,975,-374.00, nearly two-thirds of that of the whole state, the whole state assessment amounting to $115,420,193.90.

8. That up to this date, no counties except Lake, Gunnison, Chaffee, Custer and Rio Grande have refused to pay warrants or to receive them in payment of taxes on the ground of their being in excess of the constitutional limit, but all of the other 13 counties whose warrants are in excess, are still receiving such warrants in payment of taxes and such counties are still paying such warrants.

9. That on May 19th, 1883, suit was begun in this Court by John Fitzgerald vs. Lake County, on warrants bearing date from

October 3rd, 1881, to January 1st, 1882, to which suit defendant appeared and pleaded, but made no plea or answer that such warrants were void for excess beyond constitutional limit, and afterwards by stipulation entered in writing a deduction for inflated warrants of $677.72 was made, and judgment entered May 16, 1884, for $13,766.83, which is now being paid.

On September 23rd, 1883, a suit was begun in this Court by Lucian Baker against said Lake County, on county warrants, bearing date from 1881 to just prior to the date of suit. The defendant appeared and plead, but made no objections as to constitutional limitation, and afterwards by stipulation filed in the case, certain warrants were withdrawn, and judgment for $15,982.70 was entered November 12th, 1883.

On February 11th, 1883, one Henry D. Winters began a suit in this Court against said Lake County, on county warrants, bearing date from February 2nd, 1880, to January 17th, 1883, and
94 the defendant appeared and plead, but set up no constitutional limitation, and, on stipulation afterwards entered, certain warrants were withdrawn and dismissed from complaint because inflated, and February 19th, 1884, the plaintiff in this suit, Frank W. Rollins, having become the owner of the warrants was substituted as plaintiff, and judgment was thereupon, on stipulation aforesaid, entered May 12th, 1885, for the sum of $42,883, which sum was more than 50 per cent. in excess of the amount to which the county could under any circumstances have become indebted, either with or without a vote under the construction of the constitution now claimed by the county, which said judgment stands unappealed from, and the said county is now levying from year to year taxes to pay the same.

In June, 1884, one Ransom J. Chase, recovered a judgment in this Court on coupons of the funding bonds for the sum of $1,441, which said judgment was paid by defendant February 7th, 1885.

October 31st, 1884, Peter Becker, Sheriff of Lake County def't, recovered a judgment on county warrants for $18,750, which is now being paid.

October 17th, 1885, Dennis Sullivan and Charles Hall recovered judgment on county warrants for $4,000, both of which were recovered in the District Court of Lake County, and in the summer of 1886, one Daniel E. Parks, recovered a judgment by agreement of the county for fees as County Attorney for the sum of $5,000, in last mentioned Court, and in none of these cases was there any claim made that the amount of indebtedness was limited by the constitution.

That on May 13th, 1885, a judgment was recovered against said Lake County in the District Court of Chaffee County for the sum of $13,670.33, and one in the District Court of Arapahoe County on the 15th day of May, 1883, in favor of James H. Morris, for the sum of $29,992.20, and one of $6,514.08 in same Court in favor of L. H. Eicholtz on the 13th day of January, 1886, all of which were recovered on county warrants, issued between the years 1881 and 1885, in none of which any constitutional limitation was set

95 up, the greater part of which judgments have been paid, $26,000 having already been paid on the Morris judgment. But the judgment in favor of Chaffee County was had on warrants issued to Chaffee County to pay the part of the debt of old Lake County existing before the organization of defendant Lake County which defendant was liable to pay the assessed valuation of the old county being less than $1,000,000.

9th. In 1877, at the first meeting of the Legislature of the State it passed acts providing for audit and allowance of bills and issue of county warrants in payment of county indebtedness and provided fees or salaries of officers, and also the registration of warrants, and that county warrants should be received in payment of county taxes, which law continued substantially the same until the first of January, A. D. 1887, when Senate Bill 276 became a law on the subject, and also passed a law, providing for assessment and collection of taxes, and provided for levy of taxes, as follows: "For State, three mills on the dollar. (2) Interest and payment of county bonds, such sum as should be necessary. (3) Ordinary county revenue, including the support of the poor, ten mills on the dollar. (4) For the support of schools, not less than two or more than five mills. (5) For road purposes, not more than five mills. (6) A poll tax. Also providing for assessment to be made by June 25th each year. Also for equalization of assessment by the Board by the third Monday in July and for levy of tax by the Board on the first Monday in October, or subsequently, Laws of 1877, Sec. 2245 to 2285, and this law as to the amount of taxation for county purposes remains the same up to this time, except that in 1885 counties were authorized to levy, not to exceed five mills for contingencies, and by the law of April 28th, 1887, the law relating to the issuing and payment of warrants in order of registration was amended. Laws of 1887, p. 240.

96 In 1877 the legislature also passed an act concerning counties, etc., enumerating the powers and duties of each county as to building court houses, etc., Laws of 1877, Secs. 428 to 447, and by the section 447 providing the Board of County Commissioners "shall not borrow money for the purposes hereinbefore stated without having first submitted the question of such loan to the vote of the electors of the county, and without a majority of the voters legally qualified to vote, and voting on that question, shall have voted therefor;" and by Sec. 448 *et seq.*, they provided that "When the County Commissioners of any county deem it necessary to create an indebtedness for the purpose of erecting necessary public buildings, making and repairing roads and bridges, they may, by an order entered of record specifying the amount and object for which the indebtedness is to be created, submit the question to a vote," to the creation of a debt under which law the limitations of article 11, section 6, of the constitution applies, and sections 449 to 453 of said law relates in terms only to such bonds so to be issued. No provision for the submission of any question relating to the incurring of any debt other than for public buildings, roads and bridges and funding bonds in exchange for county warrants *has ever been enacted, and no*

vote has ever been taken in any county in the state as to incurring any indebtedness, except as to such bonds.

The same act provides that no account shall be allowed by any board except upon an itemized account in writing, and sworn to, and if an account rejected in whole or in part, appeal may be taken to the District Court in and for such county. The same act also provides for the issuance of funding bonds in exchange for warrants, issued prior to July 1st, 1876, upon a vote, etc., Sec. 453, *et seq.*; and providing also for the making, publishing, posting and recording a semi-annual account of the debt of the county, its rate of interest, etc., Sec. 457 (Laws of 1877); also providing for the registration of warrants, payment of taxes and exchange of warrants in ex-
97 cess and giving certificate for balance, Secs. 533 to 543, and Secs. 2289 and 2290, Laws of 1877. Providing also for official bonds and penalties for failure to discharge duties, see various offices, etc.; also providing for fine for refusing to qualify on election or appointment, Sec. 564; also laws providing election of officers, and the duties of county officers in relation thereto, section 926, *et seq.*; and also providing for compensation for all judges and clerks of election, etc., Sec. 994; also acts providing for fees of all county officers, witnesses, jurors, etc., Sec. 1115, *et seq.*

Also by the same Legislature the Board of County Commissioners was made a Board of Health with power to employ one or more physicians, and to fix the salaries and to regulate all fees and charges of every person employed by them as such Board of Health and provide for payment thereof, Sec. 2082, *et seq.*

11th. By the constitution of 1876 mines and mining claims were exempt from taxation. By act of Legislature of February 18th, 1879, and by a vote of the electors in 1879 the constitution was amended so as to include in the exemption goods to the value of $200 to each family, and ditch canals and flumes used for irrigating lands, Laws of 1879, p. 31; and the same Legislature, on the 8th day of February, 1879, passed an act for funding county indebtedness in all counties having a floating or warrant debt exceeding $5,000 on warrants issued prior to May first, 1879, and leaving it to the board to determine the amount of indebtedness at that date, and that all issued beyond the amount determined by the board, and made a part of the record, should be null and void, Laws of 1879, pp. 40 to 45.

The Legislature of 1881, and on the 21st day of February of that year, passed an act providing that it should be the duty of the County Commissioners of any county having a floating indebtedness of $10,000, etc., to provide for its funding by vote, etc., upon
98 a request of the holders of the warrants, and the only limit here, as to the time or amount, is what the holders have and will exchange of warrants, issued prior to the date of first publication of notice, etc. This act also provides for the determination of the amount by the County Commissioners, and the making of a record of such amount, and Sec. 8 of the act recites that some counties have a large floating indebtedness and the emergency clause was added. Session Laws of 1881, pp. 85 to 90, and the

same Legislature, enacted a law requiring County Commissioners to execute bonds to the amount of from $10,000 to $25,000, that they would faithfully discharge their duties and transact the business of the county economically, etc., and providing for suits on such bonds, Laws of 1881, p. 96.

That the same Legislature February 19th, 1883, legalized all appropriations heretofore made by counties towards the National Mining and Industrial Exposition, and provided the county board might thereafter make such appropriation as they deemed proper, Laws of 1881, p. 244.

In 1885 the Legislature passed an act appropriating $25,000 out of state monies to build a bridge over the Grand River, providing, however, that it should not be paid until Mesa County contributed $15,000, and Mesa County thereupon voted the full amount it could vote, $14,900, for roads and bridges by loan, and had at that time a warrant debt of $25,000 or more, Laws of 1881, p. 25; and also amended the funding law of 1881, p. 232; also an act amending the revenue laws and amount of taxes that might be levied, increasing the levy for roads from 5 to 10 mills, but leaving the ordinary county funds levy as before, at 10 mills, and providing for contingent levy of five mills to meet unforeseen contingencies, which, in the judgment of the board, required such levy, but providing that it should not be used to pay salaries or fees, Laws of 1885, p. 317.

April 28th, 1887, the legislature passed an act amendatory of the chapter concerning county government, providing that no warrant payable on demand should thereafter be drawn on the County
99 Treasurer on the ordinary county revenue fund, unless the money to pay was in the treasury, except that the Board might anticipate the collection of taxes already levied by drawing on the treasury for 80 per cent. of the taxes already levied, and persons receiving such warrants shall be held to have accepted the warrant as payment in full of the claim for which it was issued, and providing that such warrants so drawn on the tax levied should not be held to add to the debt of the county, and providing also that the amendment should not effect prior lawful warrants, and then refers to the holdings of the Supreme Court of Colorado upon warrants, etc.

These holdings of the Supreme Court were and are as follows:

Oct. 3d, 1885, an original proceeding was begun in the Supreme Court of Colorado in the case of the People *ex rel.* N. P. Seeley *vs.* David May, Treasurer of Lake County, asking writ of mandamus to compel May to receive county warrants issued prior to July 7th, 1885, in payment of county taxes. Defendant demurred to petition November 13th, 1885, and the Court on argument overruled demurrer, and gave an opinion found in the 8th Colo. Reports, 485, and 9 Pac. Rep. 34, holding the county warrant set forth in relator's petition for mandamus was in the nature of a contract, and such warrant at date of issue being receivable in payment of county taxes, its obligation was not and could not be impaired, by the law of 1885, which did not act retroactively, but prospectively. Respondent and defendant David May, Lake County, Treasurer, on January 8th, 1886, answered, setting up that the warrant referred to

as offered in payment of taxes, was issued at the time when the debt of defendant Lake County was in excess of the limitation imposed by section six (6) article eleven (11) of the constitution.

To this answer plaintiff demurred, January 9th, 1886, and this demurrer on argument was overruled March 26th, 1886, and
100 the Court rendered an opinion thereon, found at page 80, 9th Colo. Repts. and 10 Pac. Reporter 641. The plaintiff on May 28th, 1886, filed replication setting out first, that the warrant was valid because not in excess of any limitation of the constitution. 2d. Because said warrant was drawn during the fiscal year 1883, while the income revenue of the county payable for ordinary county expenses was ten mills on its valuation for that year, to wit: $42,415.30, and the whole of it was applicable to the payment of the expenses for that year, and that said amount had not been exhausted when the warrant was drawn; and 3d. That by force of the statutes of the State at the time of issuance of the warrant, it was the duty of the Board to allow the claims of witnesses for the time they had attended in criminal trials for the people, and allow the accounts for such time at fees fixed by law, and that such debt coming due by operation of law, was not within the limitation fixed by article 11, sec. 6, of the constitution. To this replication defendant demurred, and on argument the demurrer was sustained Dec. 24th, 1886, and the Court gave an opinion found in 9th Colo., p. 404 to 415, and 12 Pac. Rep. 838; petition for rehearing was filed January 8th, 1887, which the Court on January 28th, 1887, denied, and on March 10th, 1887, rendered judgment for respondent. This suit was brought in this Court, February 2d, 1887, by service of process on that day on the defendant county.

The complaint sets forth the duty of the board to audit and allow accounts and issue warrants. That the accounts were audited and allowed and warrants issued, presented for payment and registered, and the exhibits allege that all the warrants are for matters that were proper subject of charges against the county. The answer denies the indebtedness, sets up that it is a corporation only since February 8th, 1879, and denies that plaintiff is the owner, and then by five separate answers it sets up the limitation of the constitution, and by the sixth separate answer it sets up the statute of limitation
101 to certain warrants by number.

By the seventh defense, it admits that warrant No. 6,375, for $46.50, is valid, and offers judgment, if the court has cognizance to take judgment for less than $500.

8th. Sets up that certain warrants, naming them, have been inflated, and states what the true amount should be. 9th. Sets up that warrants were made payable to citizens of the State of Colorado and that assignees cannot maintain a suit thereon in this court, payees not being able so to do.

The replication denies that any warrant is in excess of constitutional limitation; admits that no vote was ever had, and answers that the warrants were issued for debts due by operation of law in carrying on the government of the county, and that all such debts were necessarily incurred, and sets up at length the action of the

Board of Commissioners of the several counties of the State as well as specially of Lake, Gunnison and Chaffee county in bonding debts, which were largely in excess, and sets forth that no county before defendant county ever raised, at any time, in court the question of limitation, and that Lake county did not, until Jan. 8th, 1886, ever at any time make answer to any demand on such warrants setting up constitutional limitation and showing the differ't judgt's entered ag'st Lake county on similar warrants. It is further stipulated that the proceedings of the Const. Convention as shown by the journal and relating to the subject of county and municipal indebtedness is as follows, viz:

Com. on Municipal Indebtedness Reports:

No county or township shall contract any debt by bond or other evidence of indebtedness, except for the purpose of erecting necessary public buildings or for making and repairing public roads and bridges, and such indebtedness contracted in any one year shall not exceed an amount equal to two mills on each dollar of valuation of property subject to taxation by such county or township, as the case may be, and the aggregate amount of such debt, inclusive
102 of all unfunded or floating indebtedness of said county or township hereafter to be created and existing at the time of the creation of such debt, shall not exceed an amount equal to five mills on each dollar of said last mentioned valuation, unless where, in manner provided by law fixing the rate of interest thereon and providing for the levying of a tax not exceeding the rate of three mills on each dollar of valuation last mentioned, sufficient to pay the annual interest on and extinguish the principal of such debt within fifteen and not less than ten years from the creation thereof, the question of incurring such debt shall be submitted to the qualified electors of such county or township, and two-thirds of those voting thereon shall vote in favor of incurring such debt.

Section 7. Any school district may, for the purpose of erecting suitable school buildings, purchasing grounds therefor or for any other school purpose provided by law, create a debt by bonds, to run not exceeding fifteen and not less than ten years, on such terms as may be by law prescribed, upon a vote of two-thirds of the qualified electors.

No. 8. No city or town shall contract any debt by bond or other evidence of indebtedness, except by means of an ordinance first legally adopted and providing for levying such a tax, not exceeding 12 mills on the dollar of valuation, as will be sufficient to pay the annual interest and extinguish the principal within fifteen years and not less than ten; it then provides for elections and limits the aggregate amount of debt so created to three per cent. on valuation.

Committee of the Whole Report.

244–6. Section 6. No county or township shall contract any debt by bond or other evidence of indebtedness, except for the purpose of erecting necessary public buildings or making and repair-

ing of public roads and bridges, canals, water ditches, or other means of supplying such county or township with water for public use, and such indebtedness contracted in any one year shall
103 not exceed an amount equal to two mills on each dollar of valuation of property subject to taxation by such county or township, as the case may be, and the aggregate amount of such debt, inclusive of all unfunded floating indebtedness of such county or township hereafter created and existing at the time of the creation of such debt, shall not exceed an amount equal to four mills of each dollar of said last mentioned valuation, unless when in manner provided by law fixing the rate of interest thereon and providing for the levying of a tax not exceeding three mills on each dollar sufficient to pay the annual interest on and extinguish the principal of such debt within fifteen years and not less than ten years from the creation thereof, the question of incurring such debt shall be submitted to the qualified electors of such county, and two-thirds of those voting thereon shall vote in favor of incurring such debt.

School directors, for the purpose of purchasing or erecting school houses, may create a debt by bond.

8. No city or town shall contract a debt by loan in any form or by contract for public improvements, except by an ordinance first legally adopted, and the funds are to be applied to the purpose in such ordinance specified, but the aggregate of the debt so created shall not exceed three mills on the valuation, etc.

No county or township shall contract any debt by bond or other evidence of indebtedness, except for the purpose of erecting necessary public buildings, or for the making and repairing public roads and bridges, canals, water ditches, or other means of supplying such county or township with water for public uses, and such indebtedness contracted in any one year shall not exceed an amount equal to two mills on each dollar of valuation of property subject to taxation by such county or township, as the case may be, and the aggregate amount of such debt, inclusive of all unfunded or floating indebtedness of such county or township hereafter created or existing at the time of the creation of such debt, shall exceed an amount equal to four mills on each dollar of said last mentioned val-
104 uation, unless when in manner provided by law, fixing the rate of interest thereon and providing for the levying of a tax, not exceeding the rate of three mills on each dollar of valuation last mentioned, sufficient to pay the annual interest on and extinguish the principal of such debt within fifteen and not less than ten years from the creation thereof, the question of incurring such debt shall be submitted to the qualified electors of such county or township, and two-thirds of those voting thereon shall vote in favor of incurring such debt.

P. 242a. The committee of the whole report.

P. 245, Sec. 7. Any school district may for the purpose of erecting suitable school buildings, purchasing grounds therefor or for any other school purpose provided by law, create a debt by bonds to run not exceeding fifteen, nor less than ten years, on such terms as

may be by law prescribed upon a vote of a majority of the qualified electors who are taxpayers of such district, voting therefor in manner prescribed by law.

Sec. 8. No city or town shall contract any debt by loan in any form or by contract of public improvements, except by means of an ordinance first legally adopted and irrepealable until the indebtedness therein provided for shall have been fully paid and discharged, specifying the purposes for which the funds to be raised thereby shall be applied * * *

P. 244. *Et seq supra.*

P. 352. The committee on State, county and municipal indebtedness to whom certain sections had been recommitted, reported.

Sec. 7. * * * * * * * * * *

Counties in which such valuation shall be more than one million of dollars—five mills on each dollar thereof—and in counties in which such valuation shall be less than one million of dollars —— cents on each dollar thereof.

And the aggregate amount of such indebtedness contracted by any county inclusive of all unfunded or floating indebtedness thereof, hereafter created and then existing shall not at any time exceed twice the amount above limited in the case of such county,
105 unless when in a manner provided by law fixing the rate of interest thereon and providing for the levying of a tax not exceeding —— mills on each dollar of said valuation sufficient to pay the interest on and extinguish the principal of such debt within fifteen and not less than ten years from the creation thereof, the question of incurring such debt shall be submitted to the qualified electors of such county and of those voting thereon shall vote in favor of incurring such debt.

Sec. 8. No school district shall contract any debt by loan in any form except for the purpose of erecting and finishing suitable school buildings for such district, purchasing suitable grounds therefor, unless upon a proposition for that purpose submitted as may be provided by law to the votes of the qualified electors of such district who shall be taxpayers therein a majority of those voting thereon shall vote in favor of incurring such debt.

Sec. 9. No city or town shall contract any debt by loan in any form except by means of an ordinance first legally adopted and which shall be irrepealable until the indebedness therein shall have been fully paid and discharged specifying the purpose to which the funds so to be raised thereby shall be applied * * * *

Received, ordered printed, and laid upon the table for future consideration.

P. 372. Committee of the whole report.

Sec. 8. No debt by loan in any form ahall be contracted by any school district for the purpose of erecting and furnishing school buildings for such district or purchasing grounds therefor unless the proposition to create such debt shall first be submitted * *

Sec. 9. No city or town shall contract any debt by loan in any form except by means of an ordinance first legally adopted and which shall be irrepealable until * * *

P. 375. Sec. 7. No county shall contract any debt by bond or other evidence of indebtedness except for the purpose of
106 erecting necessary public buildings or making or repairing of public roads and bridges and for supplying such county or township with water for public use and such indebtedness contracted during any one year by any county shall not exceed the rates following, to wit: * * *

And the aggregate amount of such indebtedness contracted by any county, inclusive of all unfunded or floating indebtedness thereof hereafter created, and then existing, shall not at any time exceed twice the amount above limited in the case of such county, unless when in manner provided by law fixing the rate of interest thereon, and providing for the levying of a tax not exceeding —— mills on each dollar of valuation sufficient to pay the interest on and extinguish the principal of such debt within fifteen, and not less than ten years from the creation thereof, the question of incurring such debt shall be submitted to the qualified electors of such county, and of those voting thereon shall vote in favor of incurring such debt.

P. 479. The committee of the whole convention report section 7 (which is now section 6) as follows:

Section 7. No county shall contract any debt by loan in any form except for the purpose of erecting necessary public buildings, making or repairing of public roads and bridges, and for supplying such county with water for public use, and such indebtedness contracted in any one year shall not exceed the rates upon the taxable property in such county, following, to wit:

Counties in which the assessed valuation of taxable property shall exceed five million of dollars, one dollar and fifty cents on each thousand dollars thereof.

Counties in which such valuation shall be less than five millions of dollars, three dollars on each thousand dollars thereof.

And the aggregate amount of indebtedness of any county
107 for all purposes, exclusive of debts contracted before the adoption of this constitution, shall not at any time exceed twice the amount above herein limited in case of such county, unless when in manner provided by law the question of incurring such debt shall be submitted to a vote of the qualified electors of such county, who, in the year last preceding such election, shall have paid a tax upon property assessed to them in such county, and a majority of those voting thereon shall vote in favor of incurring such debt, but the bonds, if any be issued for payment thereof, shall not run less than ten years, and the aggregate of such debt so contracted shall not at any time exceed twice the rate upon said valuation last herein provided for.

P. 558. On motion of Mr. Kennedy:

The convention concurred in the amendments to section 6, reported by the committee of the whole, viz., to insert after the word county, in the ninth line, the words "for all purposes;" also to insert after the word "shall," in the eleventh line, the words "at a general election;" also to strike out the words at a general election, in the

twelfth line, and insert in lieu the words "who, in the year last preceding such election, shall have paid a tax upon property asssessed to them in such county."

Also to strike out of the thirteenth and fourteenth lines the words "more than fifteen," and to add to the section the words "and the aggregate amount of such debt so contracted shall not at any time exceed twice the rate upon said valuation last herein provided for."

Mr. Webster moved to amend section 6, by inserting the word "such" before the word "indebtedness," in the ninth line.

P. 562. The convention concurred in the motion of Mr. Webster to amend section 6, by inserting the word "such" before the word "indebtedness," in the ninth line.

P. 563. Mr. Bromwell moved to reconsider the vote by which the amendment offered by Mr. Webster to insert the word "such" was inserted before the word "indebtedness," in the ninth line, was concurred in by the convention, which was also agreed to.

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Convention concurred in amendment to section 6 by adding thereto the words "provided that this section shall not apply to counties having a valuation of less than one million dollars."

P. 564. The convention adopted section 6 as reported by the committee of the whole as amended.

So the convention adopted the article on state, county and municipal indebtedness in words following:

Section 6. No county shall contract any debt by loan in any form except for the purpose of erecting necessary public buildings, making or repairing of public roads and bridges, and such indebtedness contracted in any one year shall not exceed the rates upon the taxable property in such county following, to wit: counties in which the assessed valuation of taxable property shall exceed five millions of dollars, one dollar and fifty cents on each thousand dollars thereof.

Counties in which such valuation shall be less than five millions of dollars, three dollars on each thousand dollars thereof. And the aggregate amount of indebtedness of any county for all purposes exclusive of debts contracted before the adoption of this constitution shall not at any time exceed twice the amount above herein limited in case of such county, unless when in manner provided by law the question of incurring such debt shall at a general election be submitted to the vote of the qualified electors of such county who in the year last preceding such election shall have paid a tax upon property assessed to them in such county and a majority of those voting thereon shall vote in favor of incurring such debt, but the bonds, if any be issued for payment thereof shall not run less than ten years and the aggregate amount of such debt so contracted shall not at any time exceed twice the rate upon said valuation last herein provided for, provided that this section shall not apply to counties having a valuation of less than one million dollars.

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Sec. 7. No debt by loan in any form shall be contracted by any school district for the purpose of erecting and furnishing school buildings for such district or purchasing grounds therefor, unless the

proposition to create such debt shall first be submitted to the qualified electors of the district who shall have paid a school tax thereon in the year next preceding such election. * * * * *

Sec. 8. No city or town shall contract any debt by loan in any form except by means of an ordinance first legally adopted and which shall be irrepealable until the indebtedness thereon * * *

Ordered engrossed, and referred to committee on revision and adjustment.

Sub paging 28. The committee on revision report

Sec. 6. Same as now, except the word "such" is inserted before "indebtedness."

Sec. 7. No debt by loan in any form shall be contracted by any school district for the purpose of erecting and furnishing school buildings or purchasing grounds. * * * * * *

Sec. 8. No city or town shall contract any debt by loan in any form except by means of an ordinance, which shall be irrepealable until * * * * * * * * * * *

Sub P. 83. Secs 1–9 inclusive as revised by the committee approved by convention.

Article on state and county and municipal indebtedness approved by convention as follows:

Sub. P. 85. Sec. 6. Same as now, except the word "such" was inserted before the word "indebtedness."

Secs. 7 and 8. Same as now.

Subject paging 146. Mr. Webster offered the following res-
110 olution which on his own motion was adopted, and the secretary was instructed to furnish the committee on revisions and adjustments with a certified copy thereof, viz:

Resolved, That the committee on revision and adjustments be and are hereby instructed to strike out the word "such," in the ninth line of section 6, of the article on State, County and Municipal indebtedness.

Sub. P. 159-60. Committee on revision and adjustment reported "in the article concerning State, County and Municipal indebtedness, strike out the word 'such,' in line 9 of section 6 thereof, according to the printed copy of the former report of the committee."

Concurred in and approved by the convention.

Sub. P. 189. The committee on enrollment and engrossing make final report of the entire constitution, and the constitution as reported by them was adopted.

Sub. P. 220. Sec. 6, 7 and 8, same as in printed statutes of 1883.

Also the following:

Page 563. 4, 5, 6, 7, 8.

Mr. Webster then moved to amend section six [6] by adding thereto the words "Provided, that this section shall not apply to counties having a valuation less than one million dollars," which was agreed to.

So the convention concurred in the amendment offered by Mr. Webster to section [6] six. On motion of Mr. James, the convention adopted section six [6] as reported by the committee of the

whole as amended. So the convention adopted the article on State, County and Municipal indebtedness in the words following.

[Here follows the entire article, including section six as it now appears in the Constitution of Colorado.]

It is further stipulated and agreed that if section 6, of article eleven [11], of the Constitution of the State of Colorado, be construed to be a limitation upon the power of defendant county to contract any and all indebtedness, including all such as that
111 sued upon in this action, then it is admitted that the claimed indebtedness sued on herein was incurred after the limitation prescribed by said constitution had been reached and exceeded by the said defendant, the County of Lake, and in the event of such a construction by this court, or the Supreme Court of the United States, then and in that case, and for the purposes of this action, it is hereby also admitted that all the allegations of the fifth separate defense to this action of the answer of the defendant are true and correct, and the defendant entitled to judgment thereon.

It is further stipulated, agreed and admitted by and between the parties to this action that the defendant County of Lake, sued in the name of its Board of County Commissioners herein, was organized and created by an act of the General Assembly of the State of Colorado on the 8th day of February, 1879, and that it has been acting as such ever since, and that the powers and duties of said defendant county, as a governmental corporation, were vested in and belonged to it and its Board of County Commissioners on the said 8th day of February, 1879, since which time its corporate powers have been as provided by law.

It is further admitted that the allegations made and set forth in the fifth separate defence of the defendant's answer in this action, are true and correct, and that if the plaintiffs shall recover herein against the defendant, he shall only recover the sum of money on the said warrants in the said defence enumerated, shown by said defence to be the true amount for which said warrants should have been issued, that is to say, the claimed raised parts of said warrants shall be rejected.

It is further stipulated, admitted and agreed that at the several times alleged and set forth in the plaintiff's complaint in this action, when, as it is alleged therein, the said several warrants and orders mentioned in said complaint were made and issued, and the said debt and obligation thereof contracted, or attempted to
112 be contracted, and for and during the several years of the existence of the said defendant County of Lake as such corporation, the total valuation of the taxable real and personal property of the said defendant County of Lake was not less than one million ($1,000,000) dollars, and in truth and in fact at such time and at all such times such valuation as assessed in pursuance of the laws of the State of Colorado, was and is as follows, to wit: For the year A. D. 1879, and at such several alleged time and times, three million, six hundred and seventy-two thousand, seven hundred and three dollars ($3,672,703); for the year A. D. 1880, and at such several alleged time and times, eleven million, twenty-five thousand,

seven hundred and ninety-three dollars ($11,025,793); for the year A. D. 1881, and at such several alleged time and times, sixteen million, four hundred and twenty-three thousand, four hundred and three dollars ($16,423,403), but such last named valuation was rebated by said defendant in 1882, in accordance with the judgment and decision of the Supreme Court of the State of Colorado, to the sum of about five million, seventeen thousand dollars ($5,017,000); for the year A. D. 1882, and at such several alleged time and times, four million, two hundred forty-one thousand, five hundred and thirty-five dollars ($4,241,535); for the year A. D. 1883, and at such several alleged time and times, three million, nine hundred and six thousand, five hundred and ninety dollars ($3,906,590); for the year A. D. 1884, and at such several alleged time and times, two million, eight hundred ninety-six thousand, one hundred and seventy-five dollars ($2,896,175); for the year 1885, and at such several alleged time and times, two million, four hundred thirty-five thousand, seven hundred and three dollars ($2,435,703).

It is further admitted that said several valuations of said taxable property was, were and are fixed under the laws of the State of Colorado, in such case made and provided, at the sums aforesaid, on the third Monday of the month of July of each and every year for the said several years.

113 Also, it is further admitted that thereafter the said third Monday of the said July in each and every of said several years, if the said section of the said constitution shall be so construed, the capacity and power of the said defendant county to have or contract indebtedness at any time during the year following said day and the third Monday of July of the succeeding year was and became fixed and limited to six dollars ($6) on each one thousand dollars ($1,000) of such valuation, unless by a vote of the qualified electors of said county, such limit was and is increased to twelve dollars ($12), on each one thousand dollars ($1,000) of such valuation, where such valuation exceeds one million dollars ($1,000,000), and is less than five million dollars ($5,000,000); but that where such valuation exceeds five million dollars ($5,000,000) then and in that case such limit without a vote as aforesaid, is three dollars ($3), on each one thousand dollars ($1,000) of such valuation and with a vote as aforesaid six dollars ($6) on each one thousand dollars ($1,000) of such valuation, and that in case of such construction of said constitutional provision, the extreme limit, by a vote of the qualified electors, of the power of contracting any indebtedness by said defendant under said section of said constitution, is in valuations over one million dollars ($1,000,000) and less than five million dollars ($5,000,000) twelve dollars ($12) on each one thousand dollars ($1,000) of such valuations, and in valuation exceeding five million dollars ($5,000,000) six dollars ($6) on each one thousand dollars ($1,000) of such valuations.

And it is further admitted that at the time and times, severally and respectively alleged in the plaintiff's complaint herein as the time and times, when said alleged and supposed warrants and orders were made or attempted to be made and issued by the said

defendant County of Lake, and its said Board of County Commissioners, and for and during the several years of the existence
114 of said county as such corporation, and the several years when such valuations of taxable real and personal property of said defendant was ascertained and fixed as aforesaid, the lawful outstanding, valid and unpaid indebtedness of said defendant county, for all purposes exclusive of debts contracted before the adoption of the constitution of the State of Colorado, was and is as follows, to wit: For the year A. D. 1879, and at such several alleged time and times, exceeding the sum of twenty-two thousand and fifty ($22,050); for and during the year A. D. 1880, and at such several alleged time and times exceeding the sum of thirty-four thousand dollars ($34,000); for and during the year A. D. 1881, and at such several alleged time and times, exceeding the sum of fifteen thousand one hundred dollars ($15,100); for and during the year A. D. 1882, and at such several alleged time and times exceeding the sum of twenty-six thousand dollars ($26,000); for and during the year A. D. 1883, and at such several alleged time and times, exceeding the sum of twenty-four thousand dollars ($24,000); for and during the year A. D. 1884, and at such several alleged time and times, exceeding the sum of eighteen thousand dollars ($18,000); for and during the year A. D. 1885, and at such several alleged time and times exceeding the sum of fifteen thousand dollars ($15,000). And, in case of such construction, that at such several time and times said indebtedness exceeded twice the rate upon the whole valuation of the taxable real and personal property of the said defendant county, as specified in and by said constitutional provision.

And it is further admitted that none and not one of the said supposed and alleged debts or obligations, or any, or either of the said several warrants or orders alleged, mentioned and set forth in the plaintiff's complaint in this action, was made or attempted to be made, or the debt or obligation thereof contracted, or attempted to be contracted, by said defendant county, under and in pursuance of or by authority of a vote of the qualified electors of the said
115 defendant County of Lake, as provided in and by said constitutional provision and the laws of the State of Colorado, in such case made and provided.

It is further admitted that the third Monday of July, A. D. 1879, was the 14th day of said month; that the third Monday of July, A. D. 1880, was the 16th day of said month; that the third Monday of July, A. D. 1881, was the 18th day of said month; that the third Monday of July, A. D. 1882, was the 17th day of said month; that the third Monday of July, A. D. 1883, was the 16th day of said month; that the third Monday of July, A. D. 1884, was the 18th day of said month; and that the third Monday of July, A. D. 1885, was the 17th day of said month.

It is further admitted that the following address was framed by a committee duly appointed, of the Constitutional Convention of the State of Colorado, reported to the convention by said committee, and read, considered and adopted by the said convention, and promulgated by it and submitted with the Constitution of Colorado to

the people for consideration, before and at the time of adoption of the said constitution, which constitution is the same upon which the defence in this case rests.

116 ADDRESS TO THE PEOPLE OF COLORADO.

Your representatives, in convention assembled, under the provisions of an act of Congress, approved March 3, A. D. 1875, for the purpose of framing a Constitution for the State of Colorado, have completed the work, and herewith submit the result of their labors for your adoption or rejection. The task was an arduous one, requiring a session of eighty-six days, during which time the convention labored assiduously to frame a fundamental law, wise and wholesome in itself, and which would be adapted to the general wants of the people.

In a work of such magnitude, where the interests are so varied and extensive, it is to be expected that errors would creep in, and omissions pass unnoticed, but, upon the whole, we believe it contains not only all of the primitive rights guaranteed in our National Constitution, but most of those reformatory measures which the experience of the past century have proven to be wise and judicious.

The end sought to be accomplished was to secure a just and economical administration of the departments of State, and, with this purpose in view, especial effort was made to restrict the powers of the legislative department, by making all laws general
117 and of uniform operation; to establish uniformity in the judicial department—thereby furthering the ends of justice; to prevent the corruption of public officials; to provide for the safe keeping of all public funds, and to protect the people from unjust monopolies and the oppression consequent upon the voting of bonds and other kinds of indebtedness to corporations.

But, believing that your interest in the instrument now submitted for your consideration will lead you to give it personal examination, and that you may be able to form a clear and correct opinion regarding its merits, your careful attention is invited to some of the prominent features of the different articles, which we think must meet your approval.

Bill of Rights.

In this article the usual guarantees of national and civil rights have been retained, and to the end that more power should be reserved to the people, it is further declared that the general assembly shall make no irrevocable grants of special privileges or immunities; that private property shall not be taken or damaged for public or private use without just compensation previously made to the owner thereof, or paid into court for his use; that no preference shall be given by law to religious denominations; that right and justice shall be administered without sale, denial or delay; that aliens, who are *bona fide* residents of the State, shall acquire, inherit, possess and enjoy property to the full extent as if native born

citizens. The grand jury system has been so modified as to make a grand jury consist of twelve men instead of twenty-three, any nine of whom concurring may find a bill, and the question whether it may not be abolished altogether is left to the legislature.

118 The petit jury system has been so modified as to permit the organization of a jury of less than twelve men in civil cases, thereby materially reducing the expenses of our courts. The right of trial by jury in all criminal cases has been preserved, and for the purpose of protecting witnesses in criminal prosecutions, and that the accused may always meet the witnesses against him face to face, we have provided for the taking of depositions before some judge of the Supreme, District or County Court, which can be used upon trial of the cause when the personal attendance of the witness cannot be obtained.

Executive Department.

The term of office of the governor and other State officers is fixed at two years, thereby giving the people frequent opportunities to correct the administration of affairs in this department.

It is made the duty of all the State officers to keep an account of all moneys received or disbursed by them, while the treasurer is required to furnish the governor a quarterly statement under oath of all moneys in his hands, and the place where kept or deposited, which statement is to be published for the information of the people. The governor is required to transmit these statements to the general assembly when called for, thus enabling the representatives of the people to expose, or by suitable laws prevent extravagance and frauds; and that the people may always have a proper understanding of the financial condition of the State, the governor, upon the meeting of the general assembly, is required to furnish to that body a full and correct statement of the expenses of the State, as well as an estimate of the revenue derived from all sources.

119 The Governor is given the power to remove all officers by him appointed, for misconduct or malfeasance in office; he is also empowered to grant pardons, subject, however, to such regulations for the application of the same as may be provided by law, and in all cases, when a pardon is granted, he is required to send the reason for granting the same to the General Assembly.

As an additional check upon ill-advised legislation, a majority of two-thirds of all the members of each house is required to pass a bill over the veto of the Governor.

The office of lieutenant governor is created, thereby giving the State the benefit of an officer elected by the people to fill any vacancy that might occur in the office of Governor; he is also made the presiding officer in the State senate, and has the majority vote in that body in case of a tie.

All the State officers are paid by salaries for their services, and are required to pay into the treasury all fees by them collected in their respective offices.

Legislative Department.

The General Assembly is required to meet once in two years, and is limited to a session of forty days, after the first legislature under the State. The term of office of the Senators is fixed at four years; that of the representatives at two. For the first session the compensation of the members of the General Assembly is fixed at four dollars per day, and thereafter, as may be provided by law. No member of the General Assembly shall, during his term of office, receive any increase of salary or mileage above that allowed at the time of his election.

The evils of local and special legislation being enormous, the passage of any law not general in its provssions is prohibited,
120 thus saving the State from expenses usually incurred in passing and publishing laws secured by combinations to advance private interests, and to create dangerous monopolies.

To afford protection from hasty legislation, it is required that all bills shall be printed; that only one subject shall be embraced in each bill, which shall be clearly expressed in its title; that it shall be read on three different days in each house before being passed, and that no bill shall be introduced, except for the general expenses of the government, after the first twenty-five days of the session.

We invite your special attention to section twenty-five of the article on legislation, wherein are enumerated the many cases in which the General Assembly is prohibited from passing any local or special laws.

To provide against extravagance, we have prohibited the passing of any law giving extra compensation to any public officer, servant, agent or employe, after services rendered, without previous authority of law; nor is any officer of the State to be in any way interested in any contracts or awards, by which the legislative and other departments of government are furnished with stationery, printing, paper and fuel.

It is further provided that no appropriation shall be made to any denominational, sectarian or any other institution not under the absolute control of the State.

Attention is also directed to sections twenty-seven and twenty-eight, providing against the corruptions heretofore complained of in legislative bodies, and prescribing punishments therefor.

Judiciary.

Radical changes have been made in the judicial system, to
121 meet the imperative demands of our rapidly increasing population. As at present constituted, our Courts are wholly inadequate to the transaction of the business brought before them. The consequence is, causes accumulate on the dockets, and are continued from term to term, both in the District Courts and in the Supreme Court, causing expensive and ruinous delays to parties litigant, and when reached for disposal, sufficient time and attention

cannot be devoted to their consideration to render the same satisfactory to either Courts or litigants. To correct these evils an additional judicial district is provided, with an additional district judge, making four instead of three judicial districts. This will enable the District Courts to dispose of business with proper consideration and dispatch for several years, and the General Assembly is permitted to increase the number of judicial districts and the number of judges after the year 1880.

The District Courts are invested with original jurisdiction to hear and determine all controversies in behalf of the people, concerning the rights, duties and liabilities of railroad, telegraph and toll road companies or corporations. A Supreme Court, composed of different judges from those of the District Courts, is created. This Court will have three judges, and, as constituted, will obviate the objections long entertained and frequently expressed against our present system, by which the same judge who presides over the trial of a cause in the District Court, sits in review of his own decision in the Supreme Court. The Supreme Court will now be better enabled to fully and impartially investigate and properly decide all causes brought before it, and to write out carefully prepared and creditable opinions in all causes heard and determined by it.

122 Experience having shown frequent changes of the judiciary to be unwise and detrimental to the public interest, long terms are prescribed for the judges of these Courts. The judges of the District Courts will be elected for six, and those of the Supreme Court for nine years.

Instead of Probate Courts, County Courts are created for every county, with probate jurisdiction, and such civil and criminal jurisdiction as may be prescribed by law, their civil jurisdiction being limited to controversies in which the amount involved does not exceed the sum of two thousand dollars. The judges of these Courts will be elected for three years.

The General Assembly is empowered to create Criminal Courts for counties having a population exceeding fifteen thousand, and police magistrates for cities and towns.

Justices of the Peace have jurisdiction to the amount of three hundred dollars.

Provision is made for the settlement of differences by arbitration for those who prefer that summary mode of adjustment to the more tedious and expensive litigation in other Courts.

All laws relating to Courts are required to be of uniform operation throughout the state, and the organization, jurisdiction, powers, proceedings and practice of all the Courts of the same class or grade, and the force and effect of their proceedings are required to be uniform. All judicial officers will be elected by the people, and after the first election they may be elected on a different day from that on which an election is held for any other purpose, thus taking judicial elections out of the arena of party politics.

123 *Education.*

By the provisions in this article the general supervision of the public schools is vested in a Board of Education.

The maintenance of free public schools, and the gratuitous instruction therein for all children between the ages of six and twenty-one years, is forever guaranteed.

It is declared that the public school fund shall forever remain inviolate and intact; that neither the State, nor any county, city, town or school district shall ever make any appropriation, nor pay from any public fund anything in aid of, or to help support, any school or institution of learning of any kind controlled by any church or sectarian denomination whatsoever; that no religious test shall ever be required as a condition for admission into any of the public schools, either as pupil or teacher; that no religious or sectarian dogmas shall ever be taught in any of the schools under the patronage of the State.

The General Assembly is required to pass suitable laws to husband to the fullest extent the several grants of land donated by the general government to this State for school purposes. It is provided that the several institutions of learning and charity now fostered by the Territory shall be perpetuated and cared for by the State.

Legislative Apportionment.

To guard against the undue influences to which small bodies are exposed, and in order that every portion of our extensive State, with its numerous and diversified interests, may be fairly represented, the Senate is made to consist of twenty-six, and the House of Representatives of forty-nine, members — these members not to be increased until 1890.

124 A State census is provided to be taken in the year 1885, and every ten years thereafter, which, with the federal census of 1880, and decennially thereafter, will enable the General Assembly to revise and correct the apportionment, on the basis of population, every five years. By these revisions the portions of the State which most rapidly increase in population will receive additional representation.

In view of the provisions against special legislation, already adverted to, and other measures adopted to secure economy in legislation, it is estimated that the additional expense of a legislature composed of this number over a smaller body will not be great, and that the benefits to be derived from a larger representation will more than compensate the increased expenditure. By this apportionment, every county will have a member in the House of Representatives, without regard to population.

Such a provision in a State where many of its counties are larger than whole States further east, is a necessity, and must commend itself to general approval.

Corporations.

Probably no subject has come before the Convention causing more anxiety and concern than the troublesome and vexed question pertaining to corporations. The legislatures of other States have, in most cases, been found unequal to the task of preventing abuses and protecting the people from the grasping and monopolizing tendencies of railroads and other corporations. Experience has shown that positive restrictions on the powers of the legislature in relation to these matters are necessary.

To this end we have provided for the wiping out of all dormant and sham corporations claiming special and exclusive privil-
125 eges. We have denied the general assembly the power to create corporations, or to extend or enlarge their chartered rights by special legislation, or to make such rights and privileges irrevocable; but in case it shall be found that the exercise of such rights and privileges proves injurious to the people, then the general assembly shall have power to alter, revoke or annul such charters, when that can be done without injustice to the corporators. We have declared that railroad corporations shall be liable as common carriers, and that to avail themselves of the benefits of future legislation, they must subject themselves to all the provisions and requirements of this constitution. We have forbidden the consolidation of parallel and competing lines, and of all unjust and unreasonable discriminations between individuals in their business with such corporations. We have carefully guarded the right of eminent domain, requiring a just compensation to be paid in cash when private property is taken, and have required all foreign corporations, as a condition of their doing business here, to have one or more known places of business and an agent or representative within the State, upon whom the process of our courts can be served at any and all times. We have also retained the jurisdiction of our courts in case of consolidation of a corporation within the State with any foreign corporation, over that part of the corporate property within the limits of this State We are aware that these provisions do not cover the whole ground, but it must be remembered that while some of our sister States have not gone far enough in placing restrictions on the legislative power, others have gone too far, and have had to recede. We have endeavored to take a middle ground, believing it to be more safe, and in the end that it will give more general satisfaction.

126 *Revenue and Finance.*

In framing this article much labor was bestowed with the view of securing sufficient revenue to defray the expenses of the state government without imposing onerous taxation upon any class of property or industry of the state. A uniform system of taxation upon the same class of subjects has been established. Mines and mining claims have been exempted for a period of ten years, except the net proceeds and surface improvements thereof, and ditches, canals and flumes owned and used by individuals and corporations

for the purpose of irrigating their own lands are not to be separately taxed. The property of the state, counties, cities, towns and other municipalities, and public libraries, are exempted from taxation, and, unless otherwise provided by law, lots and buildings thereon situate, used exclusively for religious worship, for schools and strictly charitable purposes, and places of burial of the dead, are exempted.

For the purpose of defraying the expenses of the state a tax is provided for, not in any case to exceed six mills on the dollar, with restrictions that when the valuation of property within the state shall amount to one hundred million dollars, the rate shall not exceed four mills, and when the valuation shall amount to three hundred million dollars, the rate shall never thereafter exceed two mills on each dollar of valuation. Corporations and corporate property, real and personal, are required to share the burdens of taxation, and the power to tax the same is never to be relinquished or suspended. The state treasurer is required to keep a separate account of each fund in his hands, to render quarterly statements specifying the amount of each fund on hand, and where the same is de-
127 posited. Stringent provisions have been adopted to prevent the speculations in public moneys so generally engaged in by the custodians of these funds, which so often result in defalcations and loss to the people. A State Board of Equalization is created, consisting of the Governor, State Auditor, Treasurer and Secretary of State, whose duties are to equalise and adjust the valuation of real and personal property among the several counties, and the Board of County Commissioners in the respective counties are constituted County Boards of Equalization, whose duties are to equalize and adjust such valuations within their respective counties.

Public Indebtedness.

By the provisions of this article we have prohibited the Legislature from lending the credit of the state in aid of any corporation, either by loan or becoming a subscriber to any stock or a joint owner with any party, except in case of forfeitures and escheats; also, from assuming any debt or liability of any party, and have also required appropriations to be kept within the limits of our resources, and that no appropriations be made unless assessments are also made sufficient to meet them, and at the same session of the Legislature.

The same principles are applied to counties, cities, towns and school districts, as far as applicable, with the additional safeguard that to increase the indebtedness in excess of the rates fixed in this constitution a vote of the people must be had thereon. In limiting the amount of indebtedness which may be contracted by counties we have endeavored to make a classification that would not cripple counties having small resources, and at the same time restricting those of larger resources to prevent extravagance.

Suffrage and Elections.

128 By this article we have given the right of suffrage to every

male person over the age of twenty-one years, imposing such restrictions only as are required by the Constitution of the United States, and upon questions pertaining to schools in the several districts of the State no person is denied the right to vote on account of sex. The question of female suffrage having been strongly urged upon the Convention by petitions numerously signed and otherwise, and the Convention thinking it unwise to hazard the adoption of the Constitution upon the decision of this question, but recognizing the right of the people to express their will thereon, have required the General Assembly, at their first session, to submit the question to a direct vote of the people at the next general election thereafter. It is provided that an educational qualification for electors may be prescribed after the year of our Lord one thousand eight hundred and ninety. For the purpose of preventing frauds and of protecting the purity of the ballot box, the system of numbering ballots has been adopted. The working of this plan has been abundantly tested, and the benefits resulting therefrom are so numerous that to have omitted it would have been to have rejected that which the experience of the older States teaches to be wise and judicious; by this plan the secrecy of the ballot is not invaded, while frauds can be easily detected and the guilty party reached, without disfranchising a whole community as frequently results under our present system.

Counties.

By this article we have provided that the General Assembly shall not by special law remove the county seat of any county, but that the location of county seats shall always remain a question to
129 be voted on by the qualified electors in the several counties.

We have provided that no portion of any county shall be stricken off, or any new county formed, without submitting the question to the electors of such county; and that when any portion of a county is added to another, or a new county created, the inhabitants thereof shall pay their proportion of the indebtedness of the county from which they were taken.

We have provided for the usual county and precinct officers, leaving the compensation to be received by them for their services to be fixed by law, as provided in section fifteen of this article. That no inconvenience may arise by reason of the change from a Territorial form of government to that of a State, it is provided that all county and precinct officers shall hold their respective offices for the full term for which they may have been elected.

Miscellaneous.

We have provided that all laws upon our statute books at the adoption of this constitution, shall remain in full force and effect until altered or repealed by the legislature of the State.

We have declared that all persons who are qualified electors at the adoption of the Constitution, shall be eligible to the several State offices, to the General Assembly, and to the various county offices.

We have prohibited under very stringent provisions the importation, manufacturing and sale, of all spurious or adulterated liquors. We have provided for the passing of laws to prevent the destruction of, and to keep in good preservation, the forests upon the public domain. We have provided for the printing of this Constitution in Spanish as well as laws passed by the General Assembly until the
130 year 1890, thus giving the Spanish-speaking population of the State an equal opportunity of being fully informed of the provisions of the fundamental law, as well as all laws passed in compliance therewith.

We have provided liberally for the amending of the constitution, thus giving to the people frequent opportunities of changing the organic law when experience and public policy may require it.

In this hasty review of the several articles contained in this constitution, we have endeavored to call your attention to those provisions in which we presumed you would be most interested. We do not think it necessary to enter into an elaborate argument to show why they should meet your approval, believing that you fully appreciate the inestimable prize secured by entering the sisterhood of States, whereby you gain those privileges that flow only from that form of government, which is the offspring of your choice, completely free in its principles, uniting in its powers security, happiness and prosperity of the whole people. But it is easy to foresee that, from different causes, and from different sources, an effort will be made, and many artifices employed, to weaken in your minds the conviction of this truth, and we may reasonably assume that the chief objection made to a State government will not be founded upon the character of the instrument we have framed, but upon the alleged and supposed increase of expenses and consequent taxation. This is the old cry, and, however potent it may have been heretofore, it certainly has lost its force in the facts of the present. We meet this objection directly, by conceding that a State government will, of course, involve an increased expense over that of our present form, but we assert that this expense will be more than balanced by the pecuniary gain alone which we will receive by becoming a State. We will suppose that if we are not admitted now, we will not have
131 another opportunity of admission for at least five years. The increase in our expenses under a State government will be about $50,000 per annum, which, in five years, will amount to $250,000. This would be saved to us, or, more properly, be delayed in payment by remaining out of the Union five years longer.

Now, let us see what we would lose in that time. The act of congress granting sections sixteen and thirty-six for school purposes, allows the State to select an amount of public land equal to that which has been sold out of said sections to settlers prior to survey. Under this arrangement we will be entitled to select about fifty sections of land.

The Enabling Act grants fifty other sections for public buildings, fifty sections for the penitentiary, and seventy-two sectione for general purposes, making a total of two hundred and twenty-two sec-

tions, or one hundred and forty-two thousand and eighty acres of land, which, at $2.50 per acre, amounts, in value, to $385,200.

It will also be remembered that, upon becoming a State, Colorado will be entitled to five hundred thousand acres of the public land within her borders, by virtue of a grant heretofore made by concongress. This amount, if selected now, would be worth to us at least $500,000.

The enabling act also grants the State five per cent. of the proceeds from the sale of the public agricultural lands after the adoption of this constitution. The amount to be derived from this source for the next five years would exceed one hundred thousand dollars, which, added to the value of the land above mentioned, would make a total of about $1,000,000, which is four times the estimated amount of the increased expenses of the State for this period, so that we would really gain over three-quarters of a million
132 dollars in five years by becoming a State. More than this, the revenues from sections 16 and 36 will save the whole State, in our school taxes, from ten to twenty-five thousand dollars yearly, making a saving in five years of from fifty to one hundred thousand dollars in addition to that already estimated. Should we not be admitted, and remain in a Territorial condition five years longer, most, if not all, the public agricultural and non-mineral lands in Colorado, which are worth anything, will have been sold by that time, so that there being none left for selection we would lose all this, even if a like grant should be renewed at the end of that time. No one will doubt this statement who reflects upon the small amount of public agricultural lands now left within our territorial limits and considers the probable immigration for the next five years. The five per cent. alluded to would, from the same cause, like the lands granted in the enabling act, be forever lost to Colorado, and we would, therefore, at the end of that time be obliged to commence our statehood with increased expenses, and at a dead loss of over a million dollars at the lowest possible estimate. In addition to these several benefits to be derived by our admission into the Union at this time, we would also call your attention to the fact that by cutting off special legislation we have lessened the expenses of that department almost one-half; by reducing the number of the petit and grand jurors the expenses of the judiciary department are greatly reduced, while the provisions guarding against hasty legislation at the close of the sessions of the general assembly will prevent great squandering of public money, and in many cases save more to the State than sufficient to pay the *per diem* and mileage of the members of that body.

133 This much for the pecuniary balance of gains and losses.

Let us now look at the political and substantial advantages of statehood as contrasted with our present condition of territorial vassalage. By becoming a State, we elect our officers from our own people and are permitted to join in the election of the Chief Magistrate of the nation, thus enjoying for the first time, while in Colorado, the sweets of self-government.

Our privileges will then be enlarged, we will no longer be sup-

pliants for the rights and immunities belonging to freemen—we will have gained them. Then we will be able to assume our proper station among the states of the union. With two senators and a representative in the National Congress, we will be enabled to command respect, and to secure additional appropriations for the fostering of our industries, as well as of extending our political privileges; then we will have a voice in the matter of Indian treaties, in the establishing of military posts and roads, in the location of mail routes, in the passing of laws concerning the title to mineral veins, and providing for the disposal of the mineral and pastoral lands of the State as suited to peculiar wants; also upon many other questions which at present interest us, but upon which we cannot now be heard. Who is there among you that would not rather be a citizen of an independent sovereign State, than a mere settler upon the public lands of the Territory, governed by satraps appointed and removed at pleasure, as best serves the whims and purposes of political rings and cliques—beggars, asking pittance at the gate of the nation; poor wards dependent upon the charity of Congress, living in a sort of penal colony, the Botany Bay of political servitude? Now that the golden opportunity is afforded,
133½ shall this state of things exist? We confidently believe it will not. Let us cherish, then, this occasion with more than ordinary zeal, actuated by the memories of the past, and inspired by the rewards for us in the future; let us arouse ourselves to the responsibilities of the hour, and, as citizens of a free republic, become, in fact, as well as in name, citizens of the American Union of Sovereign States.

WM. M. CLARK, *Chairman.*
WILBUR F. STONE,
WM. E. BECK,
JOHN S. WHEELER,
JESUS M. GARCIA,
E. T. WELLS,
ROBERT DOUGLASS,
GEORGE E PEASE,
WILLIAM R. KENNEDY,
CASIMIRA BARELA.

Said address is signed by the said committee who were members of the said convention and one of them, Hon. William E. Beck, is now Chief Justice of the Supreme Court of Colorado and a member of that Court when the decisions in the case of the People ex. rel. Seeley vs. May, were made and rendered by said Court.

Dated and signed at Denver, Colo., January 7th, A. D. 1888.

(Signed) TELLER & ORAHOOD,
Attorneys for Plaintiff.
DAN'L E. PARKS,
Attorney for Defendant.

134 Endorsed. No. 2102. In Circuit Court of the U. S. District of Colorado. Frank W. Rollins, Plaintiff, vs. the Board of County Commissioners of the County of Lake, Colo., Defendant. Agreed statement of facts. Filed January 12, 1888. (Signed) William A. Willard, Clerk.

135 Whereupon, the said counsel for the said Frank W. Rollins, plaintiff, did then and there insist before the said court, on behalf of the said Frank W. Rollins, plaintiff, that the said several matters so produced and given in evidence on the part of the said Frank W. Rollins, plaintiff, as contained in said statement, agreement and admission of facts were sufficient in law and ought to be admitted and allowed as decisive evidence, and the law applicable thereto conclusive to entitle the said Frank W. Rollins, plaintiff, to a finding in his favor on said issues by said court, and a judgment thereon in his favor for the sum of lawful money of the United States claimed to be due in said action, both principal and interest. But to this the counsel of the said Board of County Commissioners of the said County of Lake did then and there argue and insist before said court that the same alleged facts, so as aforesaid admitted, applying the law of the land thereto, were not sufficient nor ought to be admitted or allowed to entitle the said Frank W. Rollins, plaintiff, to a finding and judgment in his favor, so as aforesaid claimed and demanded in this cause; and the said Board of County Commissioners of said county then and there, on the trial and argument of said cause by its said attorney and counsel, did insist that the cause and causes of action in the plaintiff's complaint alleged and set forth, were wholly, totally and of right barred. invalid and of no obligatory force or effect whatever, by, through, under and in consequence of the force and effect of section six of article eleven of the constitution of the State of Colorado in such case made and provided, as alleged and set forth in the said answer of the said Board of County County Commissioners of the County of Lake, made and of record in this cause as aforesaid, and that by reason thereof the said Board of County Commissioners of the County of Lake was entitled, upon the facts admitted as aforesaid, by the force and effect of the said constitutional law and the law of the land applicable thereto, to a finding and judgment by

136 said court in its favor and against the said Frank W. Rollins, plaintiff, for the costs of this action. But the said counsel, learned in the law, of the said Frank W. Rollins, plaintiff, did then and there insist before said court that the same allegations, arguments and contentions of the said Board of County Commissioners were not sufficient nor ought to be admitted or allowed to entitle the said Board of County Commissioners to a finding and judgment in its favor, or to bar the said plaintiff of his aforesaid action as alleged and set forth in his said complaint herein. Thereupon the said cause and the issues involved therein of law and fact were submitted to said court before said judge for adjudication and determination according to law, and the said parties did then and there duly consent and agree, by

and between themselves and said court, that said court in adjudicating and determining the issues of said cause, so as aforesaid submitted to said court, might take the same under consideration and render judgment therein after arriving at such determination, at and during any time thereafter transpiring in the said November term of said court, or in or at the May term of said court, A. D. 1888, and afterwards, to wit, on the seventh day of May, A. D. 1888, at the May term of said court, the said Honorable David J. Brewer, said judge of said court, did then and there declare and deliver his finding, opinion and judgment as the finding, opinion and judgment of said court in said cause and upon the issues of fact and law therein joined, which opinion, decision and judgment is in the words and figures following, to wit:

137 In the Circuit Court of the United States for the District of Colorado.

FRANK W. ROLLINS,
v.
THE BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY. } 2102.

Opinion, Brewer, C. J.

This action is upon county warrants. The circumstances which surround it make it one of peculiar importance. For ten years, and from the admission of the State in 1876, many counties, whose tax levy was insufficient to meet current expenses, had been issuing warrants, which had accumulated to, as counsel says, at least $1,000,000. No question seems to have been made during these years as to the validity of such action; but the question being thereafter presented to the Supreme Court of the State, it construed section six of article eleven of the constitution of the State in such a manner as to invalidate the bulk of these warrants. The plaintiff, being a non-resident, comes into the Federal Court and invokes its judgment as an independent tribunal on the question thus determined by the State Supreme Court.

No more delicate or responsible duty is ever cast upon the Federal Court than when it is asked to determine, not what the State Supreme Court has decided, but whether its decision shall be followed. While the Federal Courts are in a certain sense independent tribunals, yet they sit within the State to construe and enforce its laws. Whenever a construction has been placed upon a State statute or constitution by her Supreme Court that determines for both State and Federal Courts all questions and rights arising after such construction. But when the rights, or claims of right, arose prior to such construction, then the duty rests upon the Federal Courts of independent examination and determination. The rule controlling in such cases is fully and clearly stated in the recent case of Burgess vs. Seligman, 107 U. S., 33, as follows:

"Since the ordinary administration of the law is carried on by the

State Courts, it necessarily happens that, by the course of their decisions, certain rules are established which become rules of property and action in the State, and have all the effect of law, and which it would be wrong to disturb. This is especially true with regard to the law of real estate and the construction of State constitutions and statutes. Such established rules are always regarded by the Federal Courts, no less than by the State Courts themselves, as authoritative declarations of what the law is. But where the law has not been thus settled, it is the right and duty of the Federal Courts to exercise their own judgment, as they also always do in reference to the doctrines of commercial law and general jurisprudence. So when contracts and transactions have been entered into, and rights have accrued thereon under a particular state of the decisions, or when there has been no decision of the State tribunals, the Federal Courts properly claim the right to adopt their own interpretation of the law applicable to the case, although a different interpretation may be adopted by the State Courts after such rights have accrued. But even in such cases, for the sake of harmony, and to avoid confusion, the Federal Courts will lean towards an agreement of views with the State Courts if the question seems to them balanced with doubt. Acting on these principles, founded as they are on comity and good sense, the Courts of the United States, without sacrificing their own dignity as independent tribunals, endeavor to avoid, and in most cases do avoid, any unseemly conflict with the well-considered decisions of the State Courts. As, however, the very object of giving to the national Courts jurisdiction to administer the laws of the States in controversies between citizens of different States, was to institute independent tribunals, which it might be supposed would be unaffected by local prejudices and sectional views, it would be a dereliction of their duty not to exercise an independent judgment in cases not foreclosed by previous adjudication." See also Pana vs. Bowler, 107 U. S., 540; Green County vs. Commissioners, 109 U. S., 104; Carroll County vs. Smith, 111 U. S., 556; Anderson vs. Santa Anna, 116 U. S., 362; Bolles vs. Brimfield, 120 U. S., 759.

Accepting that as a rule to control this Court, I pass to a statement and consideration of the immediate question.

The section of the constitution referred to is as follows:

"No county shall contract any debt by loan in any form, except for the purpose of erecting necessary public buildings, making or repairing public roads and bridges; and such indebtedness contracted in any one year shall not exceed the rates upon the taxable property in such county, following, to wit: Counties in which the assessed valuation of taxable property shall exceed $5,000,000, $1.50 on each $1,000 thereof. Counties in which such valuation shall be less than $5,000,000, $3 on each $1,000 thereof. And the aggregate amount of indebtedness of any county for all purposes, exclusive of debts contracted before the adoption of this constitution, shall not at any time exceed twice the amount above herein limited, unless when, in manner provided by law, the question of incurring such debt shall, at a general election, be submitted to such of the qualified electors of such county as in the year last preceding such election

shall have paid a tax upon property assessed to them in such county, and a majority of those voting thereon shall vote in favor of incurring the debt; but the bonds, if any be issued therefor, shall not run less than ten years, and the aggregate amount of debts so contracted shall not at any time exceed twice the rate upon the valuation last herein mentioned; provided, that this section shall not apply to counties having a valuation less than $1,000,000."

138 The decisions of the Supreme Court of Colorado referred to are People ex rel. Seeley vs. May, 9 Col. 80 and 404 and 414.

In the first of these cases the question was whether this section in all its sentences referred exclusively to debts contracted by loan, and it was held that it did not; that there were two independent declarations in it and that the third sentence commencing, "And the aggregate amount of indebtedness of any county for all purposes" was not limited to debts by loan but applied generally to all. In the second case the question was whether the limitation upon county indebtedness imposed by this section included debts incurred by operation of law as well as those arising from express contracts, and it was held that it did.

Returning now to the first question, it was and is earnestly insisted by the learned counsel for plaintiff that the scope and intent of the entire section is indicated by its opening lines, which expressly name debts by loan; that as a general rule each separate section is to be construed as carrying one idea through all its sentences, and that, even without special words of reference in the later sentences, they are to be construed as based upon the first idea or controlling fact; that not only is such the ordinary rule of construction, but also to establish a different one for this section would result in glaring absurdities, hindering the administration of county affairs in such a manner and to such an extent as shows that such was not the intent of the framers of the constitution or the people who adopted it.

Again it is insisted that although prior to the framing of this constitution seven states had incorporated into their constitutions limitations upon county indebtedness, a comparison of the condition of those states with this, in territory, population and county organization, shows the absurdity of the meagre powers given to counties in this state under such a construction of this section.

And again great reliance is placed upon cotemporary construction inasmuch as for ten years many counties have transacted business and issued warrants as though no such limitation as is now claimed existed; inasmuch as several suits were brought in different courts, both state and federal, upon county indebtedness, in which the defense of this limitation existed but was not presented; inasmuch, also, as several acts of the legislature applied to facts as they existed and, as it must be presumed, were known to exist, conflict with the limitation imposed by this construction.

It will be observed that the language of the third sentence is general. It says: "That the aggregate amount of indebtedness of any county for all purposes, exclusive of debts contracted before the adoption of this constitution, shall not at any time exceed," etc.

Now in order to make it mean what counsel claim it means, the word "such," or some word of similar meaning, must be implied prior to the words "indebtedness" or "purposes" and counsel insist that such word should be implied and that the meaning is correctly expressed when the language is the "aggregate amount of such indebtedness" or "for all such purposes." That a word may be supplied or implied when necessary to carry out the obvious intent of the sentence is, of course, conceded; but can the intent be presumed to justify the supply of the omission? It is, of course, always a question of construction and the thought and intent of the framer is the thing to be determined.

I have read the opinion of the Supreme Court on this matter and studied it with care. The solid tread of the argument of the learned judge who wrote that opinion is to mind irresistible. It compels conviction.

Starting with the conceded and elementary proposition that in determining the meaning of an instrument, whether agreement, statute or constitution, we look first to the words used, and seek their natural signification in the order of grammatical arrangement in which they are found, he shows that the sentences are separate and complete, the propositions in them independent declarations, and that there is no grammatical necessity of implying or supplying any word to perfect either. Hence the supplying or implying of a word must find some other reason than the mere grammatical arrangement for its justification.

Again, he calls attention to what, in my judgment, is most significant: The proceedings of the convention that framed this constitution. If in construing any sentence it becomes a question whether any word should be implied which is not found in order to fully express the true meaning, and we can know that when the sentence was being prepared the question of whether that very word should be inserted was presented, discussed, and it was finally determined to reject it, we should be driven almost irresistibly to the conviction that the meaning which that omitted word would disclose was not the meaning intended by the makers. Now it appears from the debates in the convention that the question of introducing this word "such" into the sentence was presented and discussed; that two or three times it was voted to introduce it and as often voted to strike it out; and that finally it was left out and the proviso at the close of the section added. I do not see how demonstration could be made more perfect as to the intent of the framers of this section. Cooley on Constitutional Limitations, 66. That which was their intent, as shown by the grammatical arrangement of the language and by their discussions, must in a matter of this kind be presumed to have been the intent of the people in adopting this constitution. The learned judge also notices other matters, such as the language of an address prepared by the convention and submitted with the constitution to the people; but I do not care to pursue this matter further or notice the various reasons urged by

him in support of the conclusion. It is enough to say that I think his reasoning unanswerable.

139 I pass now to the second question.

Does the limitation upon county indebtedness imposed by this section include debts incurred by operation of law as well as those arising from express contracts? This question may be really separated into two. First, in determining when the limit is reached, what is to be included, and second, what effect has the limit when reached upon the powers and liabilities of the county.

In regard to the first it will be noticed that county indebtedness may arise in one of three ways. It may spring from the voluntary contracts of the county authorities. Second, it may be cast upon the county by the action of the legislature, in requiring the payment by it of certain fees and salaries, and in respect to debts of this class the county as such exercises no choice, has no volition. They are compulsory as distinguished from contractual obligations. Further, it may arise from some tortious act of the county authorities. Such a tort creates a liability against the county which, ripening into a judgment, becomes a debt.

Now in determining when the limit of county indebtedness has been reached, it is obviously immaterial under said section how any particular portion of the indebtedness arose, or whence it sprang. It is enough that it is a debt. The language of the section is "the aggregate amount of the indebtedness of any county for all purposes shall not exceed," etc. Every dollar of the indebtedness might have sprung fron tortious acts of county officials which, prosecuted by the injured parties in actions *ex delicto*, have ripened into judgments and thus become debts, and still the limit be reached. Indeed the process of determination is a mere matter of mathematical calculation, the adding up of the valid debts of the county.

Secondly, suppose the limit has been reached. What effect has that on the powers and liabilities of the county? That it puts an end to its contractual powers is clear. So the Supreme Court held. Such was the obvious purpose of the framers of the section. They were familiar with the experiences of other states, the territorial laws in force, and the ordinary ways of county business everywhere. They knew that a large discretion was given to county commissioners in the matter of creating obligations against the county. They knew that it was usual to give to them power to build and keep in repair county buildings; to lay out, open and improve county roads, build bridges and otherwise subject the county to large expenditures. With this in view, the obvious purpose of the statute was to limit their powers in this direction, and to say that beyond a certain sum no county official should be authorized to contract a debt binding against the county.

On the other hand it is equally clear that this section does not enable a county to defeat its liability for a tort or prevent such liability from being merged into a judgment and thus becoming a debt. It is no defense to an action for a wrong, that if judgment be recovered therefor it will carry the county indebtedness beyond

the constitutional limit. This is conceded by the Supreme Court in this opinion. It says: "Involuntary liability arising *ex delicto* is a subject that is not contemplated by the provision." In this the court only follows prior decisions in other states.

In Bartle vs. the City of Des Moines, 38th Iowa, 414, the same doctrine was affirmed.

So also in the case of Bloomington vs. Perdue, 99th Illinois, 329, the court in that case in a single sentence disposing of the question as though a contrary doctrine were too absurd to require discussion.

See also Chicago vs. Sexton, 115th Illinois, 230, in which the court uses this language: "There is nothing new in thus holding a municipality responsible for the want of fidelity of those who act for it. Suits of that kind are of daily occurrence. The liability thus imposed is not within the constitutional and statutory limitations in regard to the creation of indebtedness." So it has been held in Iowa, that where warrants were issued in excess of the constitutional limit, and judgments rendered thereon, the defense of invalidity not having been plead, and that through the fraud of the supervisors of the county, and thereafter bonds issued in payment of such judgments, the bonds were valid in the hands of a *bona fide* holder. R. R. Co. vs. Osceola Co., 45 Iowa, 168, and 52 Iowa, 26.

The other class of indebtedness springs from neither the voluntary nor the tortious acts of county officials. The county has neither voice nor opportunity in the matter. They are imposed by the legislature, and are generally such as affect the state at large as well as the county.

It is well here to stop a moment and consider what a county is. In one aspect it is an independent corporation, having peculiar private interests and concerns; the management of these interests and concerns is, as a general rule, confided to the county officials, and the debts incurred in the management of those private affairs are created by the voluntary contracts of those officials. In another aspect, the county is but a mere subdivision of the state, and only determines locally the administration of those affairs which affect the people of the state as a whole. Take the administration of justice in the courts; the matter of elections; the preservation of the public peace and matters of a kindred nature. They are not the purely private concerns of the county. They affect vitally and largely the interests of the state as a whole. It is common elsewhere, it was and is the case here, that the cost of these public services is cast largely upon the county. Not upon the county as an independent corporation and solely interested in and benefited by such services, but as a portion of the state and as such portion thus contributing to the general welfare.

140 In the creation of debts for these services the county is not consulted. It has no voice in saying when they shall be incurred or to what extent. I know the line of demarcation is not preserved with absolute uniformity, but the general character of the difference between contractual and compulsory obligations is as I have stated. This is a matter of common knowledge, and must have been within the contemplation of the framers of the constitution.

Was it their intent to relieve the county of liability for these compulsory obligations when in any manner the general limit of indebtedness had been reached? See what that would imply; the possibility that county commissioners by extravagance might largely impair, if not practically defeat, the administration of justice, the preservation of the peace, and even the holding of elections. For public service without expectation of pay is seldom done; or, if done, only poorly. Will a constable serve process, will a sheriff at personal risk preserve the public peace, will a county attorney prosecute with vigor and interest, will juror or witness attend, giving up private interests for public good, with the knowledge that these their services are gratuitous and will receive no compensation?

Will it be said the legislature can guard against these dangers by an increase of the tax levy? Who shall say how great will be the extravagance of county officials; or even if that could be restricted by law, who can foretell how much of crime will happen during any coming year? I am advised by counsel that the suppression of a single riot in Leadville cost the county more than the entire proceeds of that year's levy. These things cannot be foreseen.

Can it be that the framers of the constitution intended that compensation for such services should depend upon the question whether a limit of county indebtedness had been reached? It must be borne in mind that the amount of such expenditures can never be foreseen. In one year they may aggregate a great amount and in the next be comparatively trifling.

These considerations of a general nature impress me forcibly with the conviction that it was not the intent of the framecrs of this section to permit a county to escape from liability on account of such compulsory obligations by the fact that its general limit of indebtedness has been reached. This conviction is strengthened by this provision in the section: That the indebtedness "shall not at any time exceed twice the amount above herein limited unless when in manner provided by law the question of incurring such debt shall at a general election be submitted," etc. Now what a county proposes voluntarily to do, what amount of debt it intends voluntarily to create may be known and submitted to a vote; but who can foresee what amount of crime may be committed, what criminal cases may have to be prosecuted, what expense must be incurred in such prosecution or in preserving the public peace not yet apparently threatened?

These are matters which, as they cannot be foreseen, cannot well be provided for by submission to popular vote. "Such debt" is the language. Obviously, a debt that is contemplatad and not one that may simply be imagined. This question did not arise in this state for the first time. In 1885 the Supreme Court of Missouri considered and decided it. In Book vs. Earle, 87th Missouri, 246, that court held that a county could not contract a debt for any purpose in excess of its revenue for the current year without the special assent of the voters, and that when it was desired to create a debt in excess of such revenue for the improvement of the court house the question must first be submitted to the qualified voters. But at the same

term in Potter vs. Douglas County, same volume, page 239, the same Court held that the constitutional limitation as to indebtedness has no application to a debt incurred by a county for the keeping and transporting of its prisoners by the sheriff or jailor of another county. The judge who wrote the opinion in that case thus states the reasons therefor:

"After carefully considering the subject, I am not of opinion that the constitutional prohibition should be ruled to apply in instances like the present. For this conclusion these are my reasons: I do not regard section twelve, *supra*, as applying here, because the effect of such construction would be destructive of the peace and good order of every county embraced within the provisions of section 6090 aforesaid, for it would be an impossibility to submit to a vote of the people of the county concerned, the question of an unascertained and unascertainable indebtedness to be incurred in the future as the exigencies of the case might demand. Who could foretell how many criminals would be arrested in the ensuing year? If this could not be done, is it not glaringly obvious that no question as to the amount of the indebtedness could possibly be submitted to the people for the sanction of their suffrages? The maxim, *lex non cogit ad impossibilia*, may appositely be invoked in the present case, a maxim equally invocable whether the law be statutory or organic. But
141 another reason occurs why that section cannot apply in the case at bar. The inhibition of the constitution, it will be observed, is leveled against a county becoming indebted, *i. e.*, through the ordinary channel, the action of the county court, the financial agent of the county. But here the indebtedness was not so incurred. It was created entirely independent of any action of the county court; created by the sheriff of the county pursuant to the command of section 6090, *supra*. The law itself gave license to the incurring of such a debt; it was incurred by operation of law, and the fact that the county would ultimately have the debt to pay cuts no figure in this discussion."

It is true by the constitution of Missouri there is a limit on the amount of taxation as well as in the matter of indebtedness, but that does not militate against the force of the argument presented by that court.

My conclusion therefore is, that it is no defense to an action upon county warrants issued in payment of these compulsory obligations that the general limit of county indebtedness has been reached. I believe that it is agreed between counsel that the warrants sued on in this action are of this nature and the judgment must be entered therefore in favor of the plaintiff.

I regret that in the conclusions that have been reached I am not fully in accord with the Supreme Court of the State. I regret this not alone because I regard it generally the duty of the Federal court to follow the Supreme Court of the State in its interpretations of the State statutes and constitution, but also because of the high respect I entertain for the individual members of that Court, who honor the office which they occupy and whose duties they so admirably dis-

charge; but over against that is the strong voice of appeal rising from the equities af these various warrant holders.

This is not the case of a series of bonds issued to a railroad corporation whose existence and work are, notwithstanding it is called a quasi public servant, we all know, prompted by personal and selfish interests, but it is the case of warrants issued to many individuals; witnesses, jurors, constables, sheriffs and the like, called upon by the laws of the State to render some public service in the administration of justice, the punishment of crime, the preservation of the public peace, the conduct of elections, matters in which the State as a whole is interested and which conduce to the general welfare, and who have obeyed the mandates of their State in the undoubting faith that the promised compensation for those services would be paid. Honesty, justice, and all the potential obligations of a solemn promise demand that they be paid; and if I have lent a too willing ear to the voice of such appeal and have permitted such equities to blind my eye to a clear vision of the literal mandate of the constitution, it is consolation to know that the amount in controversy is so great that a review of these proceedings can be had in the Supreme Court of the United States, by which high and ultimate tribunal any errors and mistakes can be corrected.

142 And afterwards and on, to wit: the time and place aforesaid, in due time, form and manner, the said Board of County Commissioners, of the County of Lake, by its said attorney and counsel, Daniel E. Parks, Esq., did then and there except to the said judgment, ruling and decision, and to that part thereof specifically which holds, adjudges and decrees in reference to the second question stated therein, that the said constitutional provision is not a limitation upon the said Board of County Commissioners of the County of Lake, as to debts or obligations incurred and imposed on the County of Lake and said board by operation of law, and especially the debts and claims involved in this action, and that it is no defense to this action that the general limit of county indebtedness had been reached when the obligations and county warrants alleged and set forth in plaintiff's complaint herein were contracted, the debt and obligation being compulsory through the operation of law, and therefore not within the limit of the said constitutional provision. And said board did also then and there except, specially to that part of said judgment and opinion which holds the judgment herein must be entered therefore in favor of the plaintiff.

And thereupon the said Court did find for the plaintiff then and there, on the day and year last aforesaid, and assessed his damages at the sum of forty thousand eight hundred sixty-three and 59–100 dollars, to which finding the said Board of County Commissioners did then and there, in due time, form and manner, duly except thereto; and thereafter, on the 7th day of May, A. D. 1888, judgment was rendered by said Court in favor of said Frank W. Rollins, plaintiff, and against said Board of County Commissioners of the County of Lake, defendant, for the sum of forty thousand eight hundred sixty-three 59–100 ($40,863.59) dollars, besides the cost of this action. To which judgment said defendant then and

143 there, by its said counsel, in due time, form and manner duly excepted.

And thereafter and on, to wit, the 9th day of May, A. D. 1888, the said defendant, the Board of County Commissioners of the County of Lake, by its said attorney and counsel, did make and file in said cause and Court a motion to set aside the said finding and judgment and grant a new trial on the merits of said cause, which motion is in *hæc verba*, to wit:

UNITED STATES OF AMERICA, } ss.
District of Colorado, }

In the Circuit Court of the United States, of the 8th Judicial Circuit, held within and for said district.

FRANK W. ROLLINS, *Plaintiff,*
No. 2102. *vs.*
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE, COLORADO, *Defendant.*
Motion to vacate Judgment, etc.

And now comes the defendant above named, by Dan'l E. Parks and H. B. Johnson, its attorneys, and moves the Court to set aside and vacate the finding and judgment of the Court herein, dated May 7th, A. D. 1888, for $40,863.69, heretofore entered in this cause, and grant a new trial on the merits and a rehearing of the issues of law and fact involved in this action upon the following grounds and for the following reasons, viz.:

First—The judgment and finding are against the law of the land.

Second—The said judgment and finding are in favor of the plaintiff, when they should have been, upon the law and facts, in favor of the defendant for costs of suit.

144 *Third*—The court erred in holding and adjudging that the indebtedness claimed and sued upon in this section was lawful and valid as against the defendant and not within the limitations prescribed by section six (6) of article eleven (11) of the constitution af the State of Colorado in such case made and provided.

(Signed), DAN'L E. PARKS and
H. B. JOHNSON,
Deft's Attys.

And on, to wit, the 30th day of June, A. D. 1888, at said term of said court, the said motion coming on to be heard by and before said court, and being submitted to said court for its judgment and decision, was overruled by said court, to which ruling and decision upon said motion by said court, the said Board of County Commissioners of the County of Lake, defendant, did then and there, in due time, form and manner, duly except.

And inasmuch as the said several matters so produced, given in evidence, had and done in said cause aforesaid, objected and insisted upon as aforesaid, had and done as aforesaid, do not appear by the record of the finding and judgment of said court afore-

said, the said attorney and counsel for the said Board of County Commissioners of the County of Lake did then and there propose his aforesaid exceptions to the opinion, finding and judgment of the said court, and the judge thereof, and requested him to put his seal and signature to this bill of exceptions, containing the said several matters so produced, given in evidence and had as aforesaid in this cause, according to the form of the statute in such case made and provided; and thereupon the said judge, at the request of the said counsel for the said Board of County Commissioners of the County of Lake, did put his seal to this bill of exceptions and sign
145 the same pursuant to the aforesaid statute in such case made and provided, and on, to wit, the 30th day of June, A. D. 1888.

(Signed) DAVID J. BREWER, [SEAL.]
Circuit Judge.

Endorsed. In the Circuit Court of the United States held within and for the District of Colorado. Frank W. Rollins, Plfft., vs. The Board of County Commissioners of the County of Lake, Colo., Deft. Bill of Exceptions. Filed July 5, 1888. (Sgd) William A. Willard, Clerk. D. E. Parks and H. B. Johnson, Deft's Attys.

146 And afterwards, and on to wit: the 6th day of July, A. D. 1888, came again the said defendant, by its attorney aforesaid, and filed in said Court and in said cause, its *Præcipe*, for a transcript of the Record on Writ of Error to the Supreme Court of the United States. And the said *Præcipe* is in words and figures as follows, to wit:

Præcipe for Transcript.

THE UNITED STATES OF AMERICA, } ss.
District of Colorado. }

In the Circuit Court of the United States for the district of Colorado.

FRANK W. ROLLINS, Plaintiff,
vs.
THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE, COLORADO. } No. 2102.

The Clerk will make a transcript in error in the above entitled cause containing the following proceedings, viz.: Summons, Complaint, Defendant's Answer, Replication, Judgment and Finding of Court, and Bill of Exceptions, and entries as to trial, etc., in record.

[Signed] D. E. PARKS,
Attorney for Defendant.

To William A. Willard, Clerk.
Denver, Colorado, May 5th, 1888.

Endorsed: No. 2102. Circuit Court of the United States, for the district of Colorado. Frank W. Rollins, Plff., vs. The Board of County Commissioners of the County of Lake. *Præcipe* for. Filed this 6th day of July, A. D. 1888. William A. Willard, Clerk. By F. W. Tupper, Deputy Clerk. D. E. Parks, Attorney for Deft.

147 And afterwards and on to wit: The 29th day of September, A. D. 1888, came again the said defendant by it attorney aforesaid and filed in said Court, and in said cause, its *præcipe* for and sued out of and under the seal of said Court a writ of error to the Supreme Court of the United States. And the said *præcipe* is in words and figures as follows, to wit:

Præcipe for Writ of Error.

UNITED STATES OF AMERICA, *District of Colorado.* } ss.

In the Supreme Court of the United States.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE, COLORADO, *Plaintiff in Error,* vs. FRANK W. ROLLINS, *Defendant in Error.* } *Error to the Circuit Court of the United States, for the District of Colorado.*

The clerk will issue a writ of error in the above entitled cause, directed to the Circuit Court of the United States of the 8th Judicial Circuit held within and for the District of Colorado at Denver, to review the record, proceedings and judgment of said Circuit Court in the cause of Frank W. Rollins, plaintiff, vs. The Board of County Commissioners of the County of Lake, defendant, wherein judgment was given and rendered by said Court against defendant Board, etc., May 7th, A. D. 1888, for $40,863 59-100 and costs and returnable at the October term, A. D. 1888, of said U. S. Supreme Court.

(Signed) DAN'L E. PARKS,
Attorney for Plaintiff in Error.

To William A. Willard, Clerk of the U. S. Circuit Court of the District of Colorado, September, ... 1888:

148 Endorsed. Gen. No. 2102. Supreme Court of the United States. The Board of County Commissioners of the County of Lake, Colorado, Plaintiff in Error vs. Frank W. Rollins, Defendant in Error. *Præcipe* for Writ of Error. Filed this 29th day of September, A. D. 1888. (Signed) William A. Willard, Clerk. D. E. Parks, Attorney for Plaintiff in Error.

And the said writ of error with the return of the Clerk thereto is next hereto attached, to wit:

Writ of Error and Return:

149 Writ of error to the Circuit Court of the United States, District of Colorado.

UNITED STATES OF AMERICA, } ss.
District of Colorado. }

The President of the United States: To the Judges of the Circuit Court of the United States, for the District of Colorado, *Greeting:*

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, between Frank W. Rollins and The Board of County Commissioners of the County of Lake, a manifest error hath happened, to the great damage of the said The Board of County Commissioners of the County of Lake, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness, The Hon. Samuel F. Miller, Associate Justice of the Supreme Court of the United States, this 2d day of October, in the year of our Lord, one thousand eight hundred and eighty-eight, and of the independence of the United States the 113th year.

(Signed), WILLIAM A. WILLARD,
[SEAL CIRCT. CT. U. S., COLO.] *Clerk.*

Allowed by MOSES HALLETT,
District Judge.

150 *Return.*

UNITED STATES OF AMERICA, } ss.
District of Colorado, }

In obedience to the command of the within writ, I herewith transmit to the Honorable Supreme Court of the United States, a duly certified transcript of a portion of the record and proceedings in the within entitled case, as specified in the *præcipe* therefor filed herein, together with all things concerning the same.

Witness, my hand and seal of said Circuit Court, at Denver, in said district, this 8th day of October, A. D. 1888.

(Signed) WILLIAM A. WILLARD, *Clerk.*
[SEAL CIRCT. CT. U. S., COLO.] By————*Deputy Clerk.*

Endorsed: Supreme Court of the United States. The Board, etc., Lake County, plaintiff in error, vs. Frank W. Rollins. Writ of error, to the Circuit Court, U. S. District of Colorado. Filed in the Circuit Court of the U. S. this 2d day of October, A. D. 1888. Signed,

William A. Willard, clerk. D. E. Parks, attorney for plaintiff in error.

151 And afterwards, and on to wit: the 2d day of October, A. D. 1888, came again the said defendant, by its attorney aforesaid, and filed in said court and in said cause, its bond on writ of error, and sued out of said court, a citation to the Supreme Court of the United States. And the said bond is in words and figures as follows, to wit:

Bond on Writ of Error.

In the Supreme Court of the United States of America.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE, COLORADO, *Plaintiff in Error,* *v.* FRANK W. ROLLINS, *Defendant in Error.* } *Security on error to the Circuit Court of the United States, District of Colorado.*

Know all men by these presents, that we, The Board of County Commissioners of the County of Lake, Colorado, The County of Lake, Colorado, and Perley Dodge, William L. Otterbach, Jeremiah Irwin, Frank De Mainville and Daniel E. Parks, of the said County of Lake, are held and firmly bound unto Frank W. Rollins, of the State of New Hampshire, in the sum of five hundred (500) dollars, to be paid to the said Frank W. Rollins, his executors or administrators. To which payment well and truly to be made, we bind ourselves and each of us, jointly and severally, our and each of our heirs, executors and administrators, firmly by these presents.

Seals with our seals. Dated this first day of October, A. D. 1888.

Whereas, The above named The Board of County Commissioners of the County of Lake, Colorado, The County of Lake, Colorado,

152 hath prosecuted a writ of error to the Supreme Court of the United States of America, to reverse the judgment rendered in the above entitled action, by the Circuit Court of the United States of the Eighth Judicial Circuit, held within and for the District of Colorado, at Denver, in said district, said judgment being against said plaintiff in error, and in favor of said defendant in error, for the sum of forty thousand eight hundred and sixty-three 59-100 dollars and costs ($40,863.59-100), and dated the 7th day of May, A. D. 1888.

Now, therefore, the condition of this obligation is such that if the above named The Board of County Commissioners of the County of Lake, Colorado, plaintiff in error, shall prosecute its said writ of error to and with effect, and answer all costs, if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE, COLORADO,
THE COUNTY OF LAKE, COLORADO, [SEAL.]
By PERLEY DODGE,
Chairman and Atty. in fact.

PERLEY DODGE, [SEAL.]
WM. L. OTTERBACH, [SEAL.]
JEREMIAH IRWIN, [SEAL.]
F. DEMAINEVILLE, [SEAL.]
DAN'L E. PARKS, [SEAL.]

Sealed and delivered in presence of
(Signed), C. C. KELLOGG.
D. E. PARKS.

Allowed and approved October 2, 1888.
(Signed) MOSES HALLETT,
District Judge.

153 Endorsed. No. 2102. Supreme Court of U. S. A. The Board of County Commissioners Co. of Lake, Colorado. Plff. in Error agst. Frank W. Rollins, Deft. in Error. Bond for costs on error. Filed Oct. 2, 1888. William A. Willard, clerk. Dan'l E. Parks, attorney for plff. in error.

AND THE SAID CITATION is next hereto attached, to wit:

CITATION.

154 The United States of America, District of Colorado. To Frank W. Rollins, Defendant in Error, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the eighth day of October next, pursuant to a writ of error, filed in the clerk's office of the Circuit Court of the United States for the District of Colorado, sitting at Denver, wherein The Board of County Commissioners of the County of Lake is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Moses Hallett, Judge of the Circuit Court of the United States for the District of Colorado, this second day of October, in the year of our Lord one thousand eight hundred and eighty-eight.

[Signed.] MOSES HALLETT, *Judge.*

155 *Proof of Service.*

UNITED STATES OF AMERICA,
District of Colorado,
Arapahoe County, } ss.

On this 3d day of October, A. D. 1888, personally appeared Daniel E. Parks, before me, the subscriber, a clerk of the Circuit Court of

the United States, for the District of Colorado, and makes oath that he delivered a true copy of the within Citation to Teller & Orahood, attorneys for the defendants in error, at their office in the City of Denver, in said County of Arapahoe, on the 2d day of October, A. D. 1888, by delivering to and leaving with a clerk in and in charge of said office a duplicate copy thereof.

[Signed.] D. E. PARKS.

Sworn to and subscribed before me, this 3d day of October, A. D. 1888.

[Signed.] WILLIAM A. WILLARD, *Clerk.*

Endorsed: Gen. No. 2101. Circuit Court of the United States, District of Colorado. The Board of Lake Co., plaintiff in error, *vs.* Frank W. Rollins, defendant in error. Citation. Filed in Circuit Court of the U. S. this 3d day of October, A. D. 1888. (Signed,) William A. Willard, clerk. D. E. Parks, attorney for plaintiff in error.

156 UNITED STATES OF AMERICA, } ss.
District of Colorado, }

I, William A. Willard, clerk of the Circuit Court of the United States for the District of Colorado, sitting at Denver, do hereby certify the above and foregoing to be a true, perfect and complete transcript and copy of a portion of the record and proceedings as specified in the *praecipe* therefor filed herein, heretofore filed or had and entered of record in said Court, and in a certain cause lately in said Court pending wherein Frank W. Rollins was plaintiff and The Board of County Commissioners of the County of Lake was defendant, as fully and completely as the same still remain on file or of record in my office.

In testimony to the above, I do hereunto sign my name and affix the seal of said Court, at Denver, in said district, this 8th day of October, A. D. 1888.

(Signed.) WILLIAM A WILLARD, *Clerk.*

[SEAL CIRCUIT CT. U. S. COLO.]

IN THE SUPREME COURT OF THE UNITED STATES.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF LAKE, COLORADO,
Plaintiff in Error,
vs.
FRANK W. ROLLINS,
Defendant in Error.
} *Assignment of Errors.*

OF THE OCTOBER TERM, A. D. 1888.

Afterwards, on to wit: the second Monday of December, in this same term before the Justices of the Supreme Court of the United States, at the capitol, in the City of Washington, comes the said The Board of County Commissioners of the County of Lake, Colorado, plaintiff in error, by its attorney Daniel E. Parks, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

First—The Circuit Court of the United States for the District of Colorado, and the Judge of said Court, Hon. David J. Brewer, erred in ruling, deciding and adjudging in and upon the trial of the aforesaid cause below that section six (6) of article eleven (XI) of the constitution of the State of Colorado was and is not a limitation upon the said The Board of County Commissioners of the County of Lake, Colorado, plaintiff here and defendant below, as to debts and obligations incurred and imposed on the said County of Lake, Colo-
158 rado, and said Board by compulsory operation of law and especially the debts and claims involved in said action.

Second—The said Court and Judge erred in ruling, deciding and adjudging in and upon the trial of the aforesaid cause below, in considering and interpreting said constitutional provision, to wit: section six (6) of article eleven (XI) of the constitution of the State of Colorado that it was and is no defense to the aforesaid suit and action below, that the general limit of county indebtedness had been reached when the obligations and county warrants alleged and set forth in the plaintiff's complaint in the aforesaid suit and action below are supposed to have been contracted, the debt and obligation thereof being erroneously adjudged by said Court and Judge to be compulsory through the operation of law, and consequently not within the limitations of the said constitutional provision.

Third—The said Court and judge erred signally in ruling, deciding and adjudging in and upon the trial of the aforesaid cause, as set forth and enunciated in the opinion and judgment of said Court upon, and in reference to, the "*second question*," as stated by said Court and judge in the latter part of said opinion and judgment,

beginning with the words "*I now pass to the second question*," and ending with the words "It is a consolation to know that the amount in controversy is so great that a review of these proceedings can be had in the Supreme Court of the United States, by which high and ultimate tribunal any errors and mistakes can be corrected," said part of said decision, opinion and ruling, and the conclusions reached thereby, being totally erroneous.

159 *Fourth*—The said Court and judge erred in ruling, deciding and adjudging in and upon the trial of the aforesaid cause below, in manner and effect as set forth and enunciated in that part of said opinion, judgment and decision of said Court and judge, disposing of the "second question" stated and decided in and by said opinion in said cause, that judgment in said cause must be entered therefore in favor of the plaintiff.

Fifth—The said Court and judge erred in deciding, ruling and adjudging in and on the trial of the aforesaid cause below that section six (6) of article eleven (XI) of the constitution of the State of Colorado, alleged and set forth in the aforesaid record of said cause, was, and is not, a limitation upon the power of the said plaintiff in error as to debts and obligations incurred and imposed by compulsory operation of law, and especially as to those claims and debts involved in this, the aforesaid action below.

Sixth—The said Court and judge erred in finding the issues of the aforesaid cause in favor of the plaintiff below, and against the defendant below, and in assessing the said plaintiff's damages at the sum of forty thousand eight hundred and sixty-three dollars and fifty-nine cents ($40,863.59), the said plaintiff being entitled to no recovery at all.

Seventh—The said Court and judge erred in giving and entering judgment in the aforesaid cause in favor of the said plaintiff below, and against the said defendant below, for the sum of forty thousand eight hundred and sixty-three dollars and fifty-nine cents ($40,-863.59) and costs, the said plaintiff being entitled to no judgment at all.

Eighth—The said Court and judge erred in finding in and upon the trial of the aforesaid cause the issues thereof in favor of
160 the plaintiff below, and against the defendant below.

Ninth—The said Court and Judge erred in not giving and entering judgment in the aforesaid cause in favor of the defendant below and against the plaintiff below for costs.

Tenth—The said Court and Judge erred in overruling the motion made by the defendant below, in the aforesaid cause, to vacate and set aside the finding and judgment of said Court in said cause and grant a new trial on the merits and a rehearing of the issues of law and of fact involved therein; and in this, to wit:

1st. The finding and judgment are against the law of the land.

2d. The judgment and finding are in favor of the plaintiff when they should have been, upon the law and facts, in favor of the said defendant below for costs of suit.

3d. The Court erred in holding and adjudging that the indebtedness claimed and sued upon in said action was lawful and valid

as against the said defendant below and that the same was not within the limitations prescribed by section six (6) of Article eleven (XI) of the Constitution of the State of Colorado in such case made and provided.

Eleventh—The said Court and Judge erred in and on the trial of the aforesaid cause below in construing the stipulations of the agreed statement of facts in the aforesaid cause against their manifest purpose and intention and in holding that under the pleadings and statement of facts in said cause the plaintiff was entitled to judgment in accordance with the opinion of the said Court and Judge expressed in the aforesaid cause.

Twelfth—The said Court and Judge erred in finding and giving judgment for the plaintiff in and upon the trial of the aforesaid cause below in a sum of money greater than that which
161 the plaintiff was, under the ruling and decision of said Court and Judge, entitled to recover in said cause upon the pleadings and statement of facts.

Thirteenth—The finding and judgment of said court and judge in the aforesaid cause below is contrary to the evidence adduced in said cause on the trial thereof and the law of the land applicable thereto, and such finding and judgment is by reason thereof signally erroneous.

And the said The Board of County Commissioners of the County of Lake, Colorado, plaintiff in error, prays that the judgment aforesaid may be reversed and annulled, and altogether for naught held, and that the said plaintiff in error may be restored to all things which it has lost by occasion of the said judgment.

DAN'L E. PARKS,
Attorney for Plaintiff in Error.

Endorsed on cover: Transcript of Record. Supreme Court of the United States. No. 1347 The Board of County Commissioners of the County of Lake, plaintiff in error, vs. Frank W. Rollins, defendant in error. In Error to the Circuit Court of the United States, District of Colorado, sitting at Denver. Filed Oct 15. 88